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REPORTS

OF

CASES

DETERMINED

IN THE

COURT OF NIZAMUT ADAWLUT:

WITH

TABLES OF THE NAMES OF THE CASES AND PRINCIPAL MATTERS.

106045

BY

W. H. MACNAGHTEN, ESQ.

REGISTER OF THAT COURT.

LIBRARY OF THE BOMBAY BRANCH OF THE ROYAL ASIATIC SOCIETY

VOL. II.

CONTAINING SELECT CASES OF 1820—1826, INCLUSIVE.

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1827.

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ADVERTISEMENT.

To those who peruse the following Reports, it cannot fail to be obvious, that much matter has been introduced unconnected with the principles laid down in the notes, and unnecessary to the elucidation of the practice proposed to be established. This is doubtless to be deprecated in some measure, as being a deviation from that perspicuous brevity which characterizes the reports of cases in crown law published in England. But a detail of the particulars developed in the criminal trials of this country cannot be regarded altogether as surplusage. According to European notions, the motives which here instigate to the commission of offences are sometimes inadequate, and not always comprehensible; and any information calculated to familiarize the Judge with the ideas and springs of action which prevail among those to whom he dispenses justice, cannot be wholly uninteresting or useless.

I have already observed, in the preface to the first volume of these Reports, that the sentences of the Nizamut Adawlut are drawn out and issued in the English language. It is a subject of regret to me, that the multifarious and incessant avocations of the Judges left them no leisure to revise their opinions. These were probably written without any reference to their future appearance in print; and I have ventured to make a few verbal alterations, where the style of remark appeared clearly intended for private reference, and obviously too colloquial for publication. This liberty has however been very sparingly exercised; a fact which may be proved by a cursory inspection of the recorded opinions. My chief object was fidelity, and I have for the most part scrupulously adhered to the letter as well as to the substance of the record.

In all cases in which the Courts of Circuit are directed not to pass sentence, the Judges are required by section 57, Regulation IX. 1793, to accompany the trial with a letter containing

their opinion on the merits of the case. This duty has, in the generality of instances, been performed with so much judgment and accuracy, as to lessen very materially the labour of the reporter. A minute examination of the Persian record of the trial I have found necessary but in few instances; and in many, the statement of the case, as furnished by the Judge of Circuit, proved to be as ample and accurate a report as I could have prepared.

JUDGES

OF THE

COURT OF NIZAMUT ADAWLUT,

PRESENT

During the period of these Reports.

In 1820.

John Fendall, Chief Judge, appointed to Council in May.
Sir J. E. Colebrooke, Bart. Chief Judge, appointed 20th May.
William Leycester, Chief Judge, appointed 8th of December.
William Edward Rees, absent from 14th July.
Samuel Thomas Goad.
Courtney Smith, officiating Judge, from 25th February, (Second Judge, 8th December.)
William Dorin, officiating Judge, from 8th December.

In 1821.

William Leycester, Chief Judge.
Courtney Smith.
Samuel Thomas Goad.
John Shakespear, appointed 27th February.
William Dorin, officiating Judge.

In 1822.

William Leycester, Chief Judge.
Courtney Smith.
Samuel Thomas Goad, (absent for two months, from 18th January.)
John Shakespear.
William Dorin, officiating Judge.
Charles Elliot, officiating Judge, from 18th January, (officiated two months.)

In 1823.

William Leycester, Chief Judge, (absent from December.)
Courtney Smith.
John Shakespear.
William Dorin, appointed 4th Judge, 30th January, (absent from 9th Oct.)
John Herbert Harington, officiating Judge, from 30th October.
William Byam Martin, appointed 27th of February.

In 1824.

John Herbert Harington, officiated as Chief Judge, from 5th of February.
Courtney Smith.
John Shakespear, (absent from October.)
William Byam Martin.
John Ahmuty, officiating Judge, from 5th February, (absent from Sept.)
Cuthbert Thornhill Sealy, officiating Judge, from 6th of December.

In 1825.

Courtney Smith, officiating Chief Judge, 28th April.
William Byam Martin.
Cuthbert Thornhill Sealy, appointed 28th July.
H. Shakespear, officiating Judge, 3d February, appointed 26th of August.
A. Ross, officiating Judge, 26th August: appointed 8th December.

In 1826.

William Leycester.
Courtney Smith.
Cuthbert Thornhill Sealy.
William Dorin.
A. Ross.

A

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CASES

IN THE

COURT OF NIZAMUT ADAWLUT.

BUKHSHOO and LOUTEE,
against
BUKHSEE JAUT.

Charge—HIGHWAY ROBBERY, attended with WOUNDING.

1820.

Jan. 19th. BUKHSHEE's case.

The prisoner convicted of highway robbery attendedwith wounding: but sentence mitigated to 14 years imprisonment in consideration of his youth, the severe wounds he received in his attempt to commit the crime, and because the act proved against him appeared to have been his first offence.

THE property involved in this case was only a turban, worth not more than six annas. The principal evidence was that of the first prosecutor, Bukhshoo, who stated, that on the 8th of March 1819, he was returning, in company with three other persons, viz. Loutee, the second prosecutor, Illahee Bukhsh, and Moohummud, from the village of Dunoura, (where he had been attending a market,) to his house situated in another village, named Choochela, both in the district of Moradabad.

On reaching, at about 7 or 8 o'clock P. M. a spot equidistant from the two villages, the party was met by the prisoner and another man armed with swords, who in a menacing tone, desired him and his companions to throw down their property. This requisition not being immediately complied with, the prisoner advanced, and wounded him on the right hand: but before he could do further mischief, he was seized and secured.

On finding himself in this predicament, he called to his accomplice, who, after robbing Loutee of his turban, came to his assistance, and made an attempt to cut down the deponent Bukhshoo, whose attention was drawn off from the custody of the prisoner by this fresh assault, and the necessity of defending himself against it. During the struggle which ensued, the prisoner effected his escape from the hands of Illahee Buksh and Moohummud; but on the deponent's succeeding in driving off the new assailant, was pursued, and again caught. This statement was corroborated by the deposition of the second prosecutor Loutee, and the testimony of Illahee Buksh and Moohummud. The prisoner pleaded not guilty, and set up in his defence, that at the time the robbery was alleged to have been committed, he was returning home from the village of Nujeebabad, where

1820.

BUKHSHEE'S case.

he had gone to seek service. This defence, however, was not corroborated by one of the witnesses whom he summoned in his behalf, and the other did not appear. The report of the Police officer showed, that the prisoner was brought wounded to the Thana, by the persons mentioned in the deposition of the first prosecutor. On a view of all these circumstances, the *futwa* of the law officer of the Bareilly Court of Circuit declared the prisoner to be convicted on violent presumption of the crime with which he stood charged, and declared him liable to discretionary punishment by *Acoobut*. The circuit Judge, though he concurred fully in the *futwa* of his law officer, and passed in consequence the sentence prescribed by the Regulations on the prisoner, thought him, on account of his youth, (he being only seventeen years of age,) the severe wounds he had received, and because the act of which he was convicted appeared to have been his first offence, a fit object for mitigation of punishment, and recommended him as such to the Nizamut Adawlut; which court, concurring with the *futwa* of their law officers, the same in substance as that given in the Court of Circuit, but deeming the prisoner a proper object of mercy, annulled the sentence of 39 stripes with a *corah*, and imprisonment in transportation beyond sea for life, and substituted the mitigated one of imprisonment with hard labour in irons for fourteen years.

1820.

Jan. 28th.

SUDASOOKH'S case.

MUSSUMMAUT SAHIBKOONWUR,
against
SUDASOOKH.
Charge—MURDER.

The principal evidence against the prisoner, a boy of 12 or 13 years of age, being furnished by his own voluntary confession, that evidence declared by the law officers to be insufficient for his condemnation, by reason of his nonage: but

The prisoner, a boy of only 12 or 13 years of age, was brought to trial at the first sessions of 1819 for the zillah of Suharunpoor, arraigned for the murder of one of his companions, a few years younger than himself. The principal evidence against him was furnished by his own voluntary confessions at the Police Thana, and before the Magistrate. The deceased had mentioned him a short time before his death, as being the person by whom he had been wounded. But there was no other direct proof to criminate him. It appeared, however, that the deceased, shortly before he suffered the injuries from the effects of which he died, had been enticed by the prisoner, under a false pretence, from the village in which they lived: and that the prisoner had been subsequently detected in disposing of some jewels, which were known to have been at the time on the person of the deceased. The law officer of the Bareilly Court of Circuit acquitted the prisoner, not thinking the circumstantial evidence sufficiently strong, and holding any proof which might be derived from the prisoner's own confession to be invalid, by reason of his nonage. This ground, however, the Judge of Circuit did not conceive to diminish in any degree the weight of the evidence. His understanding had obviously at-

1820.

this doctrine overruled by the court, and the prisoner declared to be fully convicted; and there appearing no other circumstance in his favour than his minority to render him a proper object of mercy, and it being proved that he was *doli capax* when he committed the crime, sentence awarded of imprisonment and transportation for life.

tained to a considerable maturity; and his confession was given in a clear, collected, and circumstantial manner. He saw no reason, therefore, to doubt his guilt. Nor was he of opinion that the punishment awarded to that guilt in ordinary cases, should be mitigated in this particular one, in consideration of the youth of the offender, who had acted in the prosecution of an evil design with cunning, cruelty, and circumspection; and could not consequently be supposed to have been without a felonious discretion when he perpetrated the crime. With these remarks, and in conformity with the provision of Section 2, Regulation XVII. 1817, he referred the case for the orders of the N. A. The *futwa* in that court also acquitted the prisoner, and for the same reason which was stated by the law officer of the Court of Circuit. But the Court (present Messrs. Fendall and Goad) did not concur in that *futwa*; and holding the prisoner to be fully convicted, with no other circumstance in his favour than his minority to render him a proper object of mercy, sentenced him to imprisonment and transportation for life.

GOVERNMENT,
against
JYECHUND, GHOUS ULEE and USGHUR ULEE.

Charge—FABRICATION and FRAUD.

1820.

Jan. 31st. Case of JYECHUND and others. To the offence of fabrication, punishable under regulation XVII. of 1817, no writing is necessary. It is sufficient that the seal be forged, though the paper is blank.

The prisoners were brought to trial at the 2d sessions of 1819, for the zillah of Furruckabad: charged with fabrications, and vending certain papers with forged seals, with intent to defraud the public. Some of these papers, which were blank, with the forged seals at the top, were found in the house of Ghous Ulee, along with some implements, resembling those used by engravers. The evidence against Jyechund consisted of that of an informer, named Gungoo, who swore to having purchased three of the fabricated instruments from this prisoner; of a person attached to the Thana at which Gungoo had given information, who saw Gungoo pay some money to the prisoner, and apprehending him on the spot, found two of the papers on his person: and of two others who were present at the time, and corroborated the above account. Against the last of the prisoners there was little or no proof. He was accordingly acquitted by the *futwa* of the law officer of the Court of Circuit: as was Jyechund also, from there being the direct evidence of only one person against him, and that one an informer, whose motives were open to much suspicion. Ghous Ulee was declared, to be convicted either of forging the papers, or of receiving them from others, knowing them to be forged, and keeping them in his house with evil design. The Judge of Circuit agreed in the acquittal of Usghur Ulee, and directed his discharge: but disagreed entirely in the acquittal of Jyechund, whose guilt he considered to be not only greater, but to be much better established than that of Ghous Ulee. The crime, indeed, he remarked, supposed to be proved against the latter person, had not been stated by the law officer with preci-

1820.

Case of JYECHUND GHOSE and others.

sion at all, but left in an uncertainty, which might be still further increased by clogging the *futwa* with another possibility, viz. that the forged papers had been deposited in the house of the prisoner without his knowledge. The crime, he added, of which he considered this prisoner convicted, was "the being found in possession of forged papers, knowing them to be forged, with evil intent;" for he did not doubt that a paper, though blank in other respects, if attested by a false seal or signature, and prepared with an evil object, was as much a forgery as if an instrument accompanied it. "The crime, however," he observed in conclusion, "which I conceive to be proved against Ghous Ulee, is not one for which any punishment is due under the existing Regulations. It does not come under any definition in the 3d Sec. of Regulation IV. 1807," (which refers only to the fraud of actually fabricating or altering deeds, signatures, &c.) "or in the 16th Sec. of Regulation XVII. 1817," (which prescribes penalties for the knowingly giving utterance to forged instruments.) "It is, however, as it seems, a misdemeanour under the Mahomedan law; and consequently punishable: but I know not where to look for the measure of punishment. It is most like the case of strongly suspected property, regarding which the possessor cannot give a satisfactory account; under which circumstance the property would be taken from him, but he would not be liable to any penalty: or, perhaps, it more strongly resembles the cases provided for by Sec. 11. Regulation XVII. 1817, by which persons convicted of having in their possession counterfeit coin, or stampt paper, without lawful or sufficient excuse, may be sentenced to a fine, commutable to imprisonment for a period not exceeding six months. With regard to Jychund, I consider it fully established, that he attempted to give effect to forged papers, "knowing them to be forged: a crime which comes under the provisions of Sec. X. Regulation XVII. 1817," already quoted.

With these remarks, he referred the case to the N. A. the law officers of which court declared the prisoner Ghous Ulee to be convicted on violent presumption of fabricating papers with false seals, and the prisoner Jyechund, of selling the same, knowing them to be false: and both prisoners to be liable to *Tazeer*. The Court (present Messrs. Fendall and Goad) concurred in this *futwa*, and sentenced both prisoners to seven years imprisonment. It was directed also that the Court of Circuit should give instructions to the magistrate of Furruckabad to take especial care, that the implements of forgery found in the house of Ghous Ulee, with all the forged seals and papers which had been seized there, or on the person of Jyechund, be destroyed.

1820.

Feb 5th. Case of ANUNDEE CHOUHEEN and others. Two prisoners convicted of wilful murder, sentenced to suffer death, & a third, convicted of instigating, aiding, and abetting the said murder, to imprisonment and transportation for life.

BOGWANGEER,

against

ANUNDEE CHOUHEEN, Rajpoot; JUWAHUR GOOJUR, Rajpoot; NEINSOOKH, Brahmun.

Charge—MURDER.

THE prosecutor in this case was a chela or disciple of the deceased, Rutteegeer. His charge set forth, that about midnight, some time during the month of October 1819, he was awakened by a noise within his Gooroo's hut; and supposing that thieves were stealing his bullock, got up, and went into the cow-house; but finding there that his first suspicions were incorrect, went to the room where Rutteegeer generally slept. Close by the door he observed some marks of what seemed like blood, which he afterwards ascertained it to be. On this he ran to the bed, and found Rutteegeer lying on it, dead, with his body wounded in various places, and apparently by a sword. He went into the village and to the Thana, and gave the alarm. A crowd of the villagers was collected, when the Darogha came to the spot. He stated to that officer, in reply to a question proposed by him, that he suspected the prisoner Neinsookh of participation in the murder, because he knew him to have quarrelled some time before with the deceased, about the services of a chumar named Lutteea. In consequence of this statement Neinsookh was apprehended, who gave information which led to the apprehension of the other two prisoners. Rutteegeer was about 50 years of age—a hale, stout man up to the period of his death. The prosecutor had no knowledge of any quarrel having occurred between the deceased and either of the two prisoners, Anundee and Juwahur: but the former of these was in debt to the deceased. All the prisoners pleaded not guilty. From the record of the investigation held by the Darogha on the spot, it appeared that the prisoner Neinsookh then stated, that some two months before the murder, he was in his field when he overheard Anundee and Juwahur plotting the act: that he advised them not to perpetrate it; and they desired him not to mention what he had heard: that the day before the murder, Anundee told him that he was going to a distant village to purchase a bullock, and requested the loan of his sword, which he gave to him, and which Anundee returned early the following morning: and that these circumstances combined, induced him to suppose that Anundee and Juwahur committed the murder. Anundee and Juwahur said, that they were sitting together in their field, when Neinsookh came, and proposed to them to murder Rutteegeer: that they several times refused to be concerned in such an act; but at length being urged by him, and on his stating debility consequent upon extreme illness, as being the reason why he could not effect his wishes himself, they consented: that as Anundee had no sword of his own, Neinsookh gave him his for the purpose, which he reclaimed; and received after the murder was committed. Before the Magistrate the three prisoners repeated these confessions: but Neinsookh added, that after hearing of the plot, he told Rutteegeer, and advised him to be on his guard

1820.

Case of ANUNDEE CHOUHEEN and others.

against Anundee and Juwahur; which advice, however, was disregarded by Rutteegeer. It appeared from the evidence, that Anundee, Neinsookh, and Rutteegeer were sharers in the same village: that a sum of money was due from Anundee to the deceased, which he had urgently demanded: and that no intercourse had subsisted between Neinsookh and Rutteegeer since the quarrel about the chumar Lutteea It was stated by Neinsookh, that Anundee's enmity to the deceased was occasioned by his having a criminal connection with Anundee's mother, the sister of Neinsookh; but from the depositions of the witnesses, there seemed no reason to believe that such a connection ever existed.

Before the Court of Circuit the three prisoners at first pleaded not guilty: but in their defence Anundee and Juwahur acknowledged having been present when Neinsookh committed the murder: and Neinsookh said that his sword was bloody, when returned by Anundee, which led him to suspect that the murder was committed with that weapon. The *futwa* of the law officer declared Anundee and Juwahur convicted of *Kutl i Umd*, and liable to death by *Kissas:* but acquitted Neinsookh, on account of the only direct proof against him being contained in the statements of the other two prisoners. In the latter part of this *futwa* the fourth Judge of the Bareilly Court of Circuit, (before whom the prisoners were brought to trial at the sessions for Allyghur,) did not concur. He stated, in the letter which accompanied his reference of the case for the orders of the Nizamut Adawlut, that the acknowledgment of Neinsookh that he was present when Anundee and Juwahur planned the murder, and his failing to communicate what he then heard to the nearest Police officer, rendered him an accessary before the fact: and the fact of his having under such circumstances lent his sword to Anundee, and having received it back whilst yet reeking with the blood of the deceased, left no doubt on his mind, that if not present at the murder, he was privy and consenting to its commission.

The law officers of the Nizamut Adawlut declared the prisoners Anundee and Juwahur liable to suffer death by *Kissas;* and the prisoner Neinsookh to be convicted on strong presumption of having contrived the murder of Rutteegeer, and instigated the prisoners Anundee and Juwahur to, and aided and abetted them in, its perpetration, and therefore to be liable to discretionary punishment by imprisonment.

The Court (present John Fendall and S. T. Goad) concurred in this *futwa:* and sentenced the prisoners Anundee and Juwahur to death, seeing no circumstances in either of their cases to render them proper objects of mercy, and the prisoner Neinsookh to imprisonment for life in transportation.

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Feb. 5th.
GUNGA PURSAUD'S case.

GOVERNMENT,
against
GUNGA PURSAUD, Money-Changer.
Charge—Receiving STOLEN PROPERTY.

Held that it is irregular in a Judge of Circuit to cross-question a prisoner on trial with a view to his conviction, after he has made his defence.

TOWARDS the middle of the month of July 1819, the Nazir of the Court of the city of Dacca, in the course of an enquiry he had occasion to institute for the recovery of some stolen property, received information which led him to suspect that it was in the house of the prisoner, an inhabitant of the Muhulla of Islampoora. He applied to the Magistrate for a warrant; and on obtaining it, and searching the house, found a number of suspicious looking articles, the discovery of which induced him to give notice to a number of persons who had been robbed of property, which remained yet untraced. Among these was one Arratoon Aghajan, an Armenian, from whom he knew some English chintz and other goods had been stolen the year before. Arratoon, on being summoned, identified as belonging to himself nine pieces of chintz, one piece of woollen, and one counterpane, found tied up with a quantity of other clothes in a bundle, in an upper room of the prisoner's house. The next day the Nazir took an inventory of the property in the presence of the prisoner, one Kishen Jye, a person in the employ of Arratoon, and four respectable inhabitants of the Muhulla.

The circumstances detailed in the above statement formed the ground of the present charge. It was established by the evidence of Arratoon, the Armenian shop-keeper, and some of his people, that a robbery had been committed on his premises in the course of February 1818, and a quantity of goods carried off, belonging partly to Arratoon himself, and partly to persons by whom he was employed as a commission agent. All of them united, without any very material discrepancies, in identifying various portions of the property in court: but they were unable to furnish any particular description of them; and seemed led solely from observing a similarity in their general appearance, their colour, and print, to depose to their identity with the property they had respectively lost. The Nazir of the Zillah Court, on his examination, stated, that his suspicions of the prisoner's criminality, which were first excited by the information which led him to search his house, were subsequently confirmed by his discovery of the mixt nature of the articles, consisting of dresses, jewels, culinary utensils, and others, which he found there deposited. When the box containing the property in court was opened, the prisoner complained that his good fortune had deserted him, and used other expressions which implied a consciousness of guilt. The credit, however, to be attached to this part of his statement rested entirely on the weight of the Nazir's personal character: for of the two chupprassies and four inhabitants of the Muhulla of Islampoora, to whom he referred as having accompanied him in his investigation, two did not support, and the others contradicted the assertion. The former did not profess to have heard the prisoner make any mention of the manner in which he acquired possession of the goods: and the latter agreed in saying, that he repre-

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GUNGA PURSAUD'S case.

sented himself to have bought them—differing among themselves in this, that two of them deposed to his having stated the purchase to have been made at an auction, while the others remarked only his use of the general term purchase. It was stated by four other inhabitants of the Muhulla, that the prisoner was a man of known bad character, who had at one time been convicted of, and punished for, forgery. The visible sources from which he derived his subsistence were his trade as a shop-keeper, and the rent of a house in the city, which also belonged to him. This was the case for the prosecution.

Gunga Pursaud stated in his defence, that he bought the property in court in the January preceding the trial from a merchant of the name of Thomas, in the city of Dacca; paying 165 rupees for it. The bargain was made in the house of a person of the name of McGherity; but the price given in his own. On being cross-questioned, he said, that a bill for the whole was placed by him in the bundle with the goods, and he attributed its loss to carelessness or bad intention on the part of the Nazir. The persons acquainted with the circumstances attending the completion of the bargain and purchase were McGherity and a servant of his, with three others, Gunga Govind Thakoor, Ramjee, and Neelaram. He knew Thomas to live generally in Calcutta, and was acquainted with him before the period at which he bought the goods. He was not aware of any one being in Dacca, who was acquainted with him: he could only repeat his assertion, that he met him at the house of McGherity. He had not sold any of the property, because he could not get the prices he wished for it. He had been concerned in such transactions from his boyhood.

The trial was postponed for a short time, in order to obtain the evidence of some of the witnesses referred to by the prisoner and others, who might possess information regarding the truth or falsehood of the story on which he rested his exculpation. When it was resumed, the persons named by the prisoner fully confirmed his account, two of them as to being present, when one hundred and sixty-five Rupees were paid for the goods by him to an European merchant, whose name, however, they did not know: and the third, who, (with the two others,) stated himself to have been at the time a lodger in the prisoner's house, as to having seen such merchant with the prisoner on the day stated by the others, and hearing from them, that the latter had bought some chintzes, &c. from the former. None, however, of the inhabitants of the city, of whom many were examined, appeared to have any knowledge of Thomas, as a person carrying on occasional traffic in it with English goods, brought from Calcutta; or of the prisoner's carrying on any general and avowed dealings, except as a money-changer. The wife of McGherity did not know any thing about Mr. Thomas having come, about the time stated by the prisoner, to her husband's house. But she had been separated from her husband; and lived alone on a maintenance allowed by him, for many years.

The *futwa* of the law officer declared, that although the defence of the prisoner was a faulty one, inasmuch as he had not proved that the alleged vender of the goods was ever in the city of Dacca, and

although it might therefore be suspected, that he had obtained them by illegal means, still there was no sufficient evidence that the goods in court were part of the property actually stolen; for no one had sworn to their identity, excepting persons who had suffered in the robbery, and were consequently interested in the prisoner's conviction; and the reasons which they had given for their recognition deprived it of much credit: besides which, three witnesses had agreed in stating the prisoner to have bought the goods. On which several grounds, the prisoner was declared to be acquitted.

The Judge of Circuit, differing in opinion from his law officer, referred the case to the Nizamut Adawlut. "The stolen property," he stated, in the letter which accompanied his reference, "appears to me to be fully identified by the testimony of the witnesses. The whole of these cannot positively swear to the identical articles, as the nature of them does not admit of very particular distinction. If, however, the proof on the part of the prosecution is weak, (which I do not think it,) the account given by the prisoner of the manner in which he became possessed of the property is altogether improbable and incredible. He falls in with a merchant, a Feringee, named Mr. Thomas, at the house of McGherity, a poor Irishman, long resident in Dacca: he purchases the goods from this merchant, and as evidence to the transaction, calls in two or three persons who were quite strangers to him: in the presence of them, he receives a bundle from the said Thomas, containing the goods, and pays him Rs. 165; but neither the goods nor the money were shewn to these witnesses. No such person as Thomas has ever been seen or heard of in the city of Dacca. McGherity died six months ago; his wife denies any knowledge of the said Thomas: and although the prisoner's witnesses agree with him in his story about the receipt of the goods, and payment of the money, I cannot bring myself to believe a word of it." The *futwa* of the law officers of the Nizamut Adawlut, was the same in substance with that given in the court below, and acquitted the prisoner. The following is a copy of the orders of the court on the trial, (present John Fendall and S. T. Goad.) The court concurring with their law officers, and being of opinion that the evidence is not sufficient for the conviction of the prisoner, acquit him, and order his immediate release.

The court remark, that the 3d Judge on this trial has departed from the course of proceeding laid down by Regulation IX. of 1793, in having, after taking the prisoner's defence, put him through an examination, with a view of drawing from him answers which might have a tendency to convict him: and out of the answers so furnished by the prisoner, the 3d Judge sought, by the evidence of McGherity's wife, to establish facts unfavourable to the prisoner.

The court remark, that it is the duty of a Judge to shew the utmost leniency towards the prisoner; and as the course which the third Judge adopted on this occasion is adverse to that principle, the court desire that the 3d Judge will abstain from it in future, and adhere rigidly to the mode of proceeding laid down in the Regulation above quoted.

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Feb. 11th. Babooa's case.

BUKHSH, *against* BABOOA.

Charge—Murder.

A trial for murder, charged to have taken place in the Lukhnow territory, quashed by the N. A.; the permission of Government not having been obtained to bring the prisoner to trial.

This prisoner was brought to trial at the 2d sessions of 1819, for Azimgurh. He was arraigned for the murder of Gheesai, the prosecutor's father, which was alledged to have been perpetrated in the following manner. The deceased had gone to the village of Rusoolpore, two coss from his home, to purchase a buffalo. In this village the prisoner resided; and from him the purchase was made, for 3 Rs. 12 ans. The deceased requested him to take the animal to his house; to which the prisoner assented, and they set off together. In a jungle about midway, (*within the limits of the Nuwab Vuzeer's territory,*) the prisoner fell upon the deceased with a *luthee,* with which he killed him.

The prisoner was convicted by the *futwa* of the law officer of the Court of Circuit of wilful murder, in which *futwa* the Judge of Circuit expressed his entire concurrence. The *futwa* of the law officers of the Nizamut Adawlut corresponded in substance with that of the court below; but the trial was quashed by the Chief and 4th Judges of the Nizamut Adawlut, who recorded the following order.

"The prisoner Babooa, son of Munsa, charged with the murder of Gheesai, has been convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of wilful murder, and declared liable to suffer death by *Kissas:* but it appearing from the proceedings on the trial, that the crime was committed within the limits of the territories of the Nuwab Vizier, and it not appearing from the proceedings of the Magistrate that the previous authority of the Governor General in Council was obtained for bringing the prisoner to trial, as required by Regulation V. of 1809, without which the trial of the prisoner before the Court of Circuit was illegal, the Court judge proper to quash the proceedings on the trial, and direct that the Court of Circuit will instruct the Magistrate to report the case immediately to the Governor General in Council, as directed by Clause 2, Section II. of the above Regulation.

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Feb. 16th. Case of Kunhia Singh and others.

ANUNDEE SINGH, *against* KUNHIA SINGH and 38 Others.

Charge—Dacoitee.

A warrant of release should always fol-

The prisoners in this case, (No. 19 of the calendar for the 2d sessions of 1819, zillah Ramgurh,) had all been tried, and convicted of an offence similar to that with which they were charged in No. 18 of the same calendar.

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Case of KUNHIA SINGH and others.

low an acquittal, even though the prisoner may have been previously convicted on another charge.

The circumstances of the case for which they were brought to trial in the present instance, were briefly as follow:—On the night of Friday the 13th of August, 1819, a large gang of Dacoits, with lighted torches and weapons in their hands, broke into the prosecutor's house, and plundered it of property to the amount of about three hundred rupees. The prosecutor and his family made their escape by a private way; but a person named Girdharee, who remained in the house, was beaten. The prosecutor assembled a number of persons; but they were afraid to attempt the seizure of the robbers, who soon after went off with what they had got. None of the prisoners were recognized at the time.

The law officer of the Court of Circuit declared the prisoner Kunhia convicted on violent presumption of Dacoitee, and liable to discretionary punishment: that there was only slight suspicion against Ulee Singh; and that the rest of the prisoners should be acquitted. The Judge of Circuit, in referring the trial, recorded his opinion in the following terms. "I am of opinion, that there is no doubt of the guilt of Kunhia, as the ornaments which he offered to sale to Bishnee are proved to have been plundered from the prosecutor, who has produced before this court the rest of the set to which they belong, and which, on comparison, are alike. I have sentenced him accordingly. As there is strong reason to believe that the moofussil confession of Mangur was extorted, I concur in his acquittal, together with that of Gheena, Chitroo, Choolun, and Bishnee, against whom there is no proof, and have issued a warrant for their release. Alumbee Singh has been detained for the reasons stated in my letter which accompanied the case in No. 18 of the calendar. With respect to the rest of the prisoners who have been already convicted in the case to which I have just alluded, *I agree with the law officer, that there is not sufficient proof to convict them of this Dacoitee*; but I think it very probable that they were concerned in both."

The *futwa* of two of the law officers of the N. A. convicted the prisoner Kunhia, on strong circumstantial evidence, of having been an accomplice in the Dacoitee with which he was charged, and declared him liable to punishment by *Acoobut*. The court (present W. Leycester, Chief Judge) fully concurred in this finding, and confirmed the sentence passed on the said prisoner by the Judge of Circuit, namely thirty-nine stripes of the korah, and imprisonment in transportation for life. But it appearing that the Judge of Circuit, although he had distinctly recorded his concurrence in the acquitting *futwa* of his law officer, had not issued any warrant of release with respect to the other prisoners in this case, on the ground of their detention being necessary, to suffer the sentence awarded on conviction of another case, the Court of N. A. expressed their opinion, that this course of proceeding was irregular, and issued the following order. "The court observe, that all the remaining prisoners who were put on their trial with Kunhia Singh, have been already acquitted by the circuit Judge from the charge: but with regard to several, in consequence of their conviction in another case, that a warrant of acquittal has not been issued. The court deem it necessary to direct, that a

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regular warrant of acquittal be issued in this case, which cannot be understood to affect any other case, as being a measure due under the Regulations, and necessary to preserve regularity in the Magistrate's office.

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Feb. 17th.

ZORA'S case.

AJOODHEA PERSHAD, *against* ZORA.

Charge—MURDER.

Prisoner convicted of murdering a boy for the sake of his ornaments; but appearing to be insane at the time of his trial, he was ordered into confinement, with instructions that, on the recovery of his reason, the evidence taken against him should be explained to him, his defence taken, and the law officers called on for a second *futwa*.

THE prisoner was charged with the murder of the prosecutor's son, Buldeo, by strangling him, and afterwards throwing the body into a tank.

The prosecutor, being sworn, made the following statement. On the 8th of the preceding Mohurrum, his son, the deceased, (who was 12 years of age,) accompanied him from home, to see the processions &c. of the Mussulmans which take place at that time. They went together to the shop of one Cheda, a seller of sweetmeats; and the prisoner standing there, the deceased entered into conversation with him, during which the prosecutor proceeded onwards alone. Since that time, he never saw his son alive. When he first missed him, he made search in the neighbourhood; but not finding him, applied at the Thana for assistance. The search was renewed and extended, but without effect. The following morning he communicated to the Thanadar his suspicions against the prisoner, and his reason for them, namely, his having left him in conversation with his son the previous day. In consequence of this application, the Thanadar apprehended the prisoner. At first he denied the crime, but subsequently confessed he had murdered the boy, and thrown the body into a tank. Accordingly, guided by the prisoner, they proceeded to the tank, and discovered the body of the deceased. A gold necklace and a coral one were on the body; but two pair of silver *kurrahs* and a pair of pearl earrings were missing. The body bore no marks of violence, except about the neck, where the *doputta* of the deceased was tied sufficiently tight to cause strangulation; the prisoner confessing he had murdered the boy in that manner. The *kurrahs* were restored by the prisoner at the Thana; but he denied any knowledge of the earrings. The witnesses brought forward fully substantiated the above statement, and deposed positively to his sanity up to the time of the crime being committed. The native Doctor of the jail thought him insane; and both he and the Darogha bore testimony to the strangeness of his actions since he had been placed in confinement.

The surgeon in charge of the station of Moradabad deposed to various symptoms of derangement which manifested themselves in the prisoner's actions, such as a great love of solitude, indifference to surrounding objects, &c. It was the decided opinion of the surgeon that he was insane. It was proved that he never enquired for food,

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ZORA'S case.

would eat when it was presented to him, but appeared indifferent as to quantity or quality, and that he would eat ashes among other filth from the ground. On trial, the prisoner remained totally mute. The law officers of the Court of Circuit gave a *futwa*, finding him guilty of murder: and as no evidence went to prove his insanity previous to the crime, they considered him liable to capital punishment by *Kissas*.

The Judge of Circuit, in his letter referring the case to the Nizamut Adawlut, stated that the prisoner had remained mute since his commitment, and there was a vacancy in his eye denoting idiotism; but he considered the prisoner deserving of death, as no doubt existed in his, the Judge's mind, of the prisoner's sanity when the crime was committed. The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner of murder and theft, but considered *Kissas* barred by the insanity of the prisoner, who was liable to *Deeut*, and to be confined till he recovered.

The Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,) having duly considered the proceedings held on this trial, passed the following order.

"The court observe, that it is shewn on this trial, particularly by the evidence of Mr. Assistant Surgeon Hall, that the prisoner was at the time of his trial in a state of mental derangement: the court, therefore, deem it proper to direct that Zora be sent to, and confined in the insane hospital at Bareilly; and that the proceedings held before the Judge of Circuit and the Magistrate of Moradabad be transmitted through the Court of Circuit to the Magistrate at Bareilly, with instructions, that, in the event of the prisoner's full recovery of his intellects, he explain to him the evidence that has been taken against him on this trial, and call upon him to state, if he wish, any witnesses to be summoned in his favour; and if he have any witnesses, the Magistrate will cause their attendance before the Court of Circuit at the ensuing sessions.

"The Judge of Circuit, of course, in the presence of his law officer, will again explain to the prisoner all that has passed on the above proceedings, and will then call upon him for his defence, and examine any witnesses he may have named in his favour. A second *futwa* will then be taken, and the Judge of Circuit will record his assent or dissent therefrom, and submit the proceedings, with the usual report, to this court."

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Feb. 28th. Case of SUFDER KHAN and others.

RAM PODARUTH, son of the Suhaee Mull,
against
SUFDER KHAN, Mokhtar of Ranee Puhlad Koonwur, DHUNUDHOOJ SING, and ABDHOOT SING.

Charge—MURDER.

It appearing from the evidence of some of the witnesses, in the course of a trial before the court of circuit, that they were concerned in the act with which the prisoner stood charged, the court directed the circuit Judge to consider the proceedings of the trial held by him, and on which his reference to the court was found. ed, as incomplete: and ordered a further investigation of the case at the ensuing sessions, the charge being drawn up as well against these witnesses, as against the prisoners first indicted, to whom leave was to be given to make a supplemen-

FOR the better understanding of the circumstances of this case, it appears desirable to preface the recital of them by a detail of the relative situations of the several parties concerned, previous to the decease of the individual for whose murder the prisoners stood arraigned.

Rajah Puhlwan Singh died about ten years ago, leaving a widow (Ranee Puhlad Koonwur) and two sons. The estate was, after his death, held and enjoyed by the Ranee, to whom was left the future uncontrolled disposal of it. The younger of the two sons did not long survive his father. The elder married, and, soon after, also died without issue, leaving a widow, Hunwunt Koonwur, who continued to reside with the Ranee, at a place called Roodurpoor, situated in the family zemindaree of Sutassee. For the home management of this estate, the prisoner Sufdur Khan had, for many years, been employed as Mokhtar. The other two prisoners were distantly connected with the Ranee; and had come on a visit to her, in consequence of an illness with which she had been attacked, of so serious a nature as to induce considerable anxiety relative to the disposition of her property. The deceased, (Sheosuhaee Mull,) was at this time her Mokhtar at the Gorukhpoor court and the Collector's office; and it had long been understood, that a criminal connection subsisted between him and Hunwunt Koonwur, in whose favour a will had been made by the Ranee, of which he had the keeping, and which, in consequence of the connection just mentioned, gave him every prospect of the future exclusive possession of what hitherto had been shared by many, the prisoners among the rest. A *Punchayut* was held by the latter, and several others more or less interested in what was passing; and the result was a proposition, urgently made to the Ranee, to annul the will in favour of Hunwunt Koonwur, whose attachment to the deceased was represented as disgraceful to them all, and to execute another, declaring the son of Abdhoot Singh, (a lad about 12 years old,) her successor in the Raj. They so far prevailed as to induce a recal of the document possessed by Sheosuhaee Mull, who was likewise dismissed from his appointment, though still encouraged and supported by Hunwunt Koonwur; but the final determination regarding Abdhoot's son was suspended. The Ranee would consider, she said, and decide by and by. Thus matters stood, when one night, fifteen persons were collected, by order of one Purahoo, and taken to a deserted mud fort in Roodurpoor, in the well of which they were told was a corpse, which they were to take thence and throw into the neighbouring nullah. Two of the party descended; the body was raised; and disposed of accordingly. Those who had assisted received five rupees for their trouble, with injunctions to secrecy, and then dispersed. This body was Sheosuhaee Mull's; and the people thus engaged in its removal appeared all as witnesses at the trial.

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The deceased did not seem to have had any jewels or other valuables about his person when the act was perpetrated; and its commission, therefore, could not be ascribed with much probability to motives of ordinary cupidity; nor was there any proof of the existence of a serious quarrel between him and any other persons whomsoever.

On a consideration of these circumstances, the *futwa* of the law officer of the Court of Circuit, convicted the prisoners of being privy to the murder with which they stood charged.

"It is clear enough," observed the judge of Circuit, in the letter which accompanied his reference of the case to the Nizamut Adawlut, "that a riddance of the deceased must have been most acceptable to the prisoners; and, with reference to the *Punchayut* and its consequences, it is impossible to suppress a suspicion of their having been concerned in the destruction of the object that stood so directly in the way of their interests; but in this (and there is nothing further) there is not, by any means, I conceive, sufficient to *convict* them, however strong the mental presumption may be that they are guilty. *I think* they *are* so, but I do not think they have been *proved so*; and upon this opinion found my dissent from the *futwa*, which declares them liable to punishment as accessaries.

"But, be this decided as it may, there cannot be a doubt of direct participation on the part of Purahoo and his fifteen followers; and I have directed the Magistrate to detain the whole of them in custody till the orders of the Nizamut Adawlut shall be received regarding them. They should all, in my opinion, stand their trial at the ensuing sessions. The intermediate confinement at least they have already fairly earned; and if not ultimately convicted, (which they cannot well escape being, as privy to the fact,) it is, at any rate, not too much to expect a result from their commitment, which may serve to throw light on the transaction, if not to free it altogether from the obscurity which at present attaches to it.

"The Ranee's treasurer, his son, and a *Purohit*, who have acknowledged their acquaintance with, and concealment of the part performed by Purahoo, have furnished security for their attendance, should the Court deem any thing further respecting them expedient. Steps too, should be taken to insure the future attendance of the prisoners, if acquitted by the superior court of the present charge; but they are not at my disposal, standing convicted as they do by the *futwa*.

"Lest there be any demur upon the propriety of bringing Purahoo's party to trial, for what has been elicited from themselves, in the course of an examination upon oath, it may be as well to advert to the perjury which a comparison of the different depositions taken before me and before the Magistrate, will exhibit against them: and this, it should be remarked, while it deprives them of all title to lenity, does not, in any one instance, affect the point upon which their indictment has been recommended,—their confession as to the part taken by them in the removal from the well, and subsequent disposal of the body of the deceased, a confession repeated by them in both courts, and in which they have all agreed."

On this reference the Nizamut Adawlut (present Messrs. Leycester and Goad,) issued the following orders.

tary defence: and if no evidence could be found against these fresh prisoners, except that furnished by their own depositions upon oath, some of the least guilty among them were to be offered a free pardon, on the condition of their disclosing all the circumstances of the case which might have come within their knowledge.

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"Prior to passing sentence on the prisoners in this trial, the court observe, that under the suggestion of the Circuit Judge, in which the court fully concur, that Purahoo and his party be brought to trial for the part they have taken in this case, (which at present seems to implicate them at least as accessaries after the fact,) it is very possible that some circumstances may be elicited which may tend to strengthen the suspicion existing against the present prisoners, or perhaps to implicate them even on stronger grounds: and it is therefore deemed desirable to consider the record transmitted by Mr. Rattray as an incomplete trial, and direct that Purahoo, and all others concerned with him in removing the body of the deceased Sheo Suhaee Mull from a well, and throwing it into a nulla, be brought to trial at the ensuing sessions, on the charge of having been concerned in the murder of Sheo Suhaee Mull, and that their trial be held as a component part of the trial of the present prisoners, who will be kept in attendance during the whole, with liberty to cross-examine any witnesses whose evidence may be taken, and to offer any thing further in their defence, if they wish it. The law officer who may be present at the trial, will also consider and declare in his *futwa* the crime, if any, which he may consider to attach to the prisoners, under the additional evidence which may be taken.

"The court, however, qualify the preceding order by directing, if proof cannot be obtained of the participation of Purahoo and the others as above described, independent of their own depositions on oath, that two or three of those persons who may be deemed the least guilty shall be selected, and offered a free pardon, on condition of their giving evidence on the trial, and disclosing all the circumstances of the case which may have come to their knowledge; and the court will be ready to confirm the offer, on receiving the recommendation of the Court of Circuit or of the Magistrate to that effect.

"Considering the very heinous nature of the case, the court sanction the offer, by proclamation, of a reward of 500 Rupees to any one who may furnish information which shall tend to the conviction of the principal or of any of the accessaries before the fact in the murder of Sheo Suhaee Mull.

"The Court further observe, that Mr. Rattray was at liberty to have committed any of the witnesses he considered fit to be put on their trial under a charge of perjury, which he is not at all precluded from doing, in consequence of this reference. The measure, however, must rest with Mr. Rattray." The case was sent back accordingly.

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Feb. 29th.
KULLOOA's case.

MUSSUMMAUT JUWAHIR,
against
KULLOOA, Cultivator.

Charge—HIGHWAY ROBBERY.

THE prisoner stood charged before the Court of Circuit for the division of Bareilly, with having, in conjunction with two other men, robbed the prosecutrix, on one of the high-roads in the district of Moradabad.

The evidence of a witness on a trial varying from that which, according to the Thana report, he was there stated to have given; held that such variation is not sufficient to invalidate it.

It appeared that the defendant had been long notorious, as being one of that daring description of robbers denominated *Quzzaks*, whose depredations are usually committed in the face of day, and who, relying on their expertness in eluding the pursuit of justice, rarely take the precaution to disguise their persons, or to conceal their mode of life, and in consequence are more generally known, and more frequently recognized, than any other class of public offenders.

Though the robbery for which the prisoner was indicted occurred on the 29th of March 1814, and he was at the time recognized as one of the party concerned in its perpetration, he managed to frustrate the measures adopted by the magistrate for his apprehension, till the 8th of July 1819, when he was seized with some difficulty by three men belonging to the Police establishment.

The prosecutrix, it appeared, was travelling in a covered cart from the town of Umrooah, where she resided, for the purpose of being present at a fair, which was about to be held in the village of Casheepoor. On the second day of her journey, she was stopt at about 10 or 11 o'clock A. M. in the vicinity of a place called Puthurkhera, by three armed men, mounted on horses, who robbed her of some clothes and other articles of property, valued at sixty rupees. She was too much agitated, she stated in her deposition, to recognize any one of the robbers; but she heard her servant, who was driving the cart, address the prisoner by his name. The prisoner pleaded not guilty.

Two witnesses, Khoda Bukhsh and Dowlut Khan, servants of the prosecutrix, who attended her on her journey to Casheepoor, swore with great confidence to the person of the defendant; but there was no other direct or collateral proof of his guilt.

On the credit attached by him to the statements of these two persons, and from a suspicion of the motives which led to the prisoner's sudden disappearance from the district, the law officer of the Court of Circuit convicted the prisoner, and declared him liable to discretionary punishment by *Acoobut*. The circuit Judge concurred in the *futwa* thus given, from a consideration of the hour at which the robbery was committed, of the prisoner's being previously known to the two deponents, who had full time to recognize his person, and of there being no ground for supposing them to have any selfish object in effecting his conviction.

The law officers of the Nizamut Adawlut declared the prisoner entitled to his release, on the ground of the witness Khoda Buksh having stated in his deposition before the Darogah, not that he *knew*, but

1820. KULLOOA'S case.

only that he *conjectured*, Kullooa to be the person by whom his mistress was robbed; while before the Court of Circuit, he swore positively to having recognized him at the time of that robbery. They stated moreover, in their *futwa*, that the fact of Dowlut Khan's having stated himself to have seen Kullooa once only, and that seven years before the aforesaid time, when he was yet a boy of 12 or 13 years old, went against his credibility; and that there was reason to think, that the prisoner was on his journey to and from, or residing at Lahore for two years previous, and five subsequent to the month in which the violence was committed.

The Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,) were not satisfied with this *futwa*, and were of opinion, that the guilt laid to the prisoner's charge was fully established against him by the evidence of the prosecutrix and the testimony of the witnesses Khoda Buksh and Dowlut Khan, which corresponded very accurately with their depositions on a former trial against other prisoners who were acquitted in 1815, and when they could have no probable object in making up a story to convict Kullooa. They allowed little, if any weight to the discrepancy noticed in the *futwa* of the law officers regarding the deposition of Khoda Buksh, which, in point of fact, only arose from the Thana report, and not from his own testimony; and considering that the defence of an *alibi* for seven years at Lahore set up by the prisoner, was no further proved than by the testimony of two witnesses, who deposed that the prisoner told them seven years ago, that he was going to Lahore, and that they saw him after a lapse of seven years from that time, when he informed them that he had just returned from Lahore, the court declared him to be duly convicted, and sentenced him to imprisonment in transportation for life.

1820. March 4th. Case of FUKEERA and Others.

GOVERNMENT, *against* FUKEERA, SHUBRATEE, and NURKOO.

Charge—BURYING ALIVE MUSSUMMAT AUSTOORNEE.

Three Moosulmauns convicted of aiding in the suicide of a leprous woman, who buried herself with the corpse of her husband, (also a leper,)

AT the second sessions of 1819, for zillah Gorukhpore, these prisoners were brought to trial. The case, as stated in the letter of reference by the circuit Judge, was briefly as follows.

The husband of the woman Austoornee, was nephew to the prisoner Fukeera. Both husband and wife were grievously affected with the leprosy: the fingers of both had dropt off: and in this miserable state the former died, and was carried to the grave by the latter, who threw herself into it, and, by her own desire, was buried with him by the three prisoners.

Fukeera and Nurkoo are feeble wretched looking objects, aged about 50. Shubratee is a hale Moosulmaun Fukeer, about 30, and would appear to be the spiritual guide of the village in which this abomina-

1820.
Case of FUKEERA and Others.

tion occurred. The *futwa* convicts the three of burying Austoornee alive at her own request; and I concur in the judgment. It may be proper to observe, that no benefit could possibly accrue to the survivors from the destruction of the woman: she died in the utmost poverty. The Fukeer received the sheet with which the corpse of the husband had been covered; but this was his perquisite at any rate, and needed not the second death to secure it to him.

sentenced to 6 months imprisonment.

The final order of the Nizamut Adawlut (present S. T. Goad, 4th Judge,) was as follows.

The prisoners Fukeera, Shubratee, and Nurkoo, have been convicted by the *futwa* of two of the law officers of the Nizamut Adawlut, on strong presumption of burying Austoornee, (a confirmed leper,) alive at her own request, in the same grave with her husband, and declared liable to discretionary punishment by *Tazeer*. The court, concurring in such *futwa*, sentence the prisoners to six months imprisonment from this date.

1820.
March 8th.
BOODUN KUHAR'S case.

SURBANUND,
against
BOODUN KUHAR.

Charge—MURDER.

Case of a slave convicted of administering *Dukra* to his master, in consequence of which he died: sentenced to sufferdeath.

THIS trial came on at the 2d Sessions of 1819, for Zillah Behar. The deceased Bhyrodutt was Mohurrir of the Thana of Urwul. The prisoner was his servant, who on the 6th of Assin, corresponding with the 10th of Sept. 1819, was ordered by his master to kill a kid, and dress it for his dinner. At night, after having finished his business, he sat down to eat, with the prosecutor Surbanund, a relation of his. The prisoner gave each a portion of the flesh he had dressed on separate plates. After the deceased had eaten some of it, he remarked to Surbanund that it had a bitter taste, and at last desired the prisoner to give him some of what remained in the cooking vessel, which having tasted, he said it was good. The deceased having finished eating, lay down, but soon complained of being unwell, and sent for one of the Burkundazes, on whose arrival he said that he suspected his servant had poisoned him. Vomiting medicines were administered by a native doctor, but without effect, for Bhyrodutt died in a few hours; and a cat, which had eaten some of the flesh left by the deceased, died also before the next morning. Just before Bhyrodutt's death, the prisoner confessed having mixed the poison called *Dukra* with the first plate of flesh, which he had given him, and this he confirmed before the Magistrate. It appeared that the prisoner had taken 45 rupees, which had been intrusted to his charge by the deceased, to repay which he sold himself to the deceased as a slave, and a deed to this effect was drawn up, and signed and witnessed before the Kazee of the Purgunna. It is probable that this was the reason of his administering the poison to his master.

1820.
Boodun Kuhar's case.

The law officer of the Court of Circuit convicted the prisoner of mixing poison with the food of the deceased, and thereby causing his death, and declared him liable to discretionary punishment by *Acoobut*; but that *Kissas* and *Deeut* were barred. The Judge of Circuit declared his opinion, that under all the circumstances of the case, it was clearly proved, that the prisoner administered the poison called *Dukra* to the deceased, with the intention of destroying him; and that, from the way in which he was taken ill immediately after eating, and the after symptoms, as well as from the cat having also died, there could be no doubt that it caused his death.

He remarked also, that the *Dukra*, which is brought from the Nepaul hills, is well known to the natives in general to be a most deadly poison, whether taken into the stomach or introduced into the circulation by a wound, and is commonly used to poison arrows for the destruction of wild beasts. The *futwa* of the law officers of the Nizamut Adawlut, also convicting the prisoner, he was sentenced by that Court, (present W. Leycester and W. E. Rees,) to suffer death.

1820.
March 9th.
Dumree Dosadh's case.

KOONWUR CHUND,
against
DUMREE DOSADH.

Charge—Murder.

A boy aged fifteen convicted of murdering another boy for the sake of his ornaments, sentenced to ten years imprisonment.

The prisoner was tried at the 2d Sessions of 1819, for Zillah Behar.

It appeared in evidence, that on the 17th of Kartick, or 20th October of the above year, Duljeet, a boy of 9 years of age, who lived with his uncle the prosecutor, had gone out in the morning to amuse himself, and was missed about noon. His uncle and several other persons went in search of him, without success; but the next day in the afternoon, the body of Duljeet was found in a field of *juwar*, a short distance south of the village, with the throat cut, and the ornaments he usually wore missing. Information was given to the Police officers, and an inquest on the body was held by the Mohurrir of the Thana.

Some days after, the prisoner Dumree, who is a boy of only fifteen years of age, was apprehended on the information of a woman named Fitree, who said she had seen the prisoner on the day the boy was missed, washing a knife and cloth; and that he had just before come out of the field in which the body was afterwards found. She did not, however, at the time suspect him, as she had not heard of the murder.

On the prisoner being taken into custody and carried to the Thana, he at first denied the charge; but on his house being searched, and the four gold earrings found, he was again questioned, when he confessed that he and a person named Paimnarain had committed the murder; that he had held the deceased while Paimnarain cut his throat, and that Paimnarain had taken the two silver kurrahs, and he had got the four earrings, which several witnesses swore belonged to the

1820.

DUMREE DOSADH'S case.

deceased. It also appeared that Duljeet was seen with the prisoner Dumree, a short time before he was missed. When Paimnarain was apprehended, he denied the charge; and as nothing was found in his house when searched, and as there was no other evidence against him except the confession of Dumree, he was discharged by the Magistrate.

The prisoner, when brought before the Magistrate, at first said that he had merely seen Paimnarain cutting Duljeet's throat, and was told by him to conceal his knowledge of it; but, on being further questioned, admitted that what he had stated before the Thanadar was correct.

The law officer of the Patna Court of Circuit found the prisoner guilty of being concerned in the murder, and assisting therein, and declared him liable to punishment by *Acoobut*. The Judge of Circuit expressed his opinion, that there was strong reason to believe that the prisoner was concerned in the murder, and that he was himself the perpetrator of it. It was, however, he observed, possible that the prisoner only saw the murder committed, and was induced by fear, and a part of the ornaments, to conceal his knowledge of it; and the judge therefore recommended, that in consequence of this, as well as of the extreme youth of the prisoner, the superior Court would consider him an object of mercy.

The *futwa* of two of the law officers of this court convicted the prisoner on strong presumption of the murder of Duljeet, and declared him liable to punishment by *Seasut*, extending to death, and the court fully agreed therein; but taking into consideration the grounds on which the officiating Judge of Circuit recommended the prisoner to mercy, sentenced him to imprisonment and hard labour for ten years.

GOVERNMENT, *against* NARAIN and Others.

1820.

April 6th. Case of NARAIN and others.

Charge—DACOITY, and RECEIVING PLUNDERED PROPERTY.

A prisoner found guilty by the *futwa* of the law officers of privity to a Dacoity on his own confession in the Mofussil and before the magistrate;

THE Prisoner Narain was tried with many others at the second Sessions of 1819, for Zillah Behar.

The Vakeel of Government, in opening the proceedings, stated, that on the preceding 31st of May, a Dacoity had been committed in the village of Kurrungunge, by a party consisting of twenty or thirty men, armed with swords, spears, and clubs, who succeeded in forcibly entering the houses of nine inhabitants of the said village, and plundered eight of them of certain articles, chiefly consisting of cloth and wearing apparel; and that some of the persons so plundered would be produced to give evidence identifying the prisoners with the ringleaders of the party of Dacoits, particularly a prisoner named Bundhoo.

1820.

Case of NARAIN and others. but released by the Nizamut Adawlut, the persons whom he named as his accomplices having been acquitted of the charge of Dacoity.

The chief witnesses for the prosecution were the nine persons robbed. The first called stated, that being alarmed at the approach of a party of Dacoits, he evacuated his house, and saw the prisoner Bundhoo and another enter it with arms and a light. The witness shortly after returned to his house, and found these two persons plundering it, on which they proceeded to maltreat him, and took from his ears a pair of earrings. The whole property taken from him amounted in value to 26 Rupees. The witness was present, when the houses of certain suspected persons were searched. In the house of Narain they found the earrings and a piece of cloth, to which he swore positively. This witness admitted, that before the magistrate his statement had differed in many material points from what he now gave. He allowed that he had then denied knowledge of any of the robbers, and attributed this to the fear he felt lest one of the prisoners, named Bundhoo, should take serious revenge on him if he mentioned his name. Another witness, who had been robbed of certain articles, swore that the property found in the prisoner Mojee Roy's house belonged to him, and was the identical property of which he had been robbed. Six other witnesses confirmed the account of the robbery, but could not identify any of the prisoners, except one, who swore positively to seven of them. It appeared, however, that the statement of this witness before the Judge of Circuit differed so materially from that which he gave before the Magistrate, that little or no credit could be attached to it. The same observation applied to the evidence of those who swore to the property discovered in the several prisoners' houses.

The prisoners, in their defence, severally denied the charge preferred against them, and brought witnesses to prove an *alibi*, as also to character. Mojee Roy produced witnesses to prove, that the cloth found in his house was his own property. The prisoner Narain, who had before the Magistrate confessed to a privity in the crime, and stated that the Dacoits before and after the robbery had assembled in his house, dividing the property there, in his defence declared that he was compelled to make this confession by the ill treatment he received from the Darogah and his followers.

The law officer of the Court of Circuit convicted Narain on his own confession of *Thangeeut*, or receiving stolen property knowingly, and declared him liable to discretionary punishment by *Tazeer*; and acquitted the rest, on the ground of the contradictory nature of the evidence which had been given against them before the Magistrate, and before the Court of Circuit. The Judge of Circuit did not concur in the conviction of Narain, as he did not believe his confession, (he, Narain, having when first apprehended, denied all knowledge of the Dacoity,) and was inclined to think, that in the hope of release, he was afterwards induced to say what he did before the Thanadar, and was afraid to retract before the Magistrate. He concurred in the acquittal of the other prisoners.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having been privy to a Dacoity. The Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,)

observing that the prisoner confessed his privity to a Dacoity, committed by Bundhoo and others, for which they had been tried and acquitted, did not consider his guilt legally established, and directed his immediate release.

1820.
Case of NARAIN and others.

KUNHYA LAL, *against* BALGOVIND.

1820.
May 8th.
BALGOVIND'S case.

Charge—ROBBERY, with PERSONAL OUTRAGE.

THE prisoner was tried at the Patna city Sessions for March 1820, being charged with assaulting the prosecutor with intent to murder him; and robbing him of his ornaments, valued about eight rupees.

It appeared in evidence, that as the prosecutor, aged about 13 years, was returning home from school, on Friday evening the 25th of February 1820, or 26th Phaugon 1227, F. S. he met the prisoner on the river side, who seized him by the throat, threw him down, and robbed him of his ornaments. There were no witnesses to the fact; but several persons deposed to the apprehension of the prisoner, and the state in which the prosecutor was found. The prisoner also confessed that he robbed the boy of his ornaments, but that another person, who was with him at the time, had carried them away, and he moreover offered to restore the value of them.

To constitute the crime of robbery by open violence, as defined in the Regulations, it is requisite that persons should go forth, if unarmed, in a gang.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of forcibly taking the prosecutor's ornaments; and added, that it was probable, if people had not come to the boy's assistance, he would have been murdered.

The Circuit Judge, in submitting the reference, stated that he concurred in the *futwa*; but that as the offence appeared to him to amount to robbery by open violence, it became necessary to submit the trial for the final orders of the superior Court. At the same time, he recommended mitigation of the punishment prescribed for that offence, the prosecutor not having sustained any material injury.

On the 8th of May 1820, the following order was passed on the trial by the court of Nizamut Adawlut, (present Messrs. Leycester and Goad.)

The *futwa* of one of the law officers of the Nizamut Adawlut convicts the prisoner of robbery, attended with personal outrage; and declares him liable to discretionary punishment by *Acoobut*, in which the Court fully agree.

The Court observe, that the 3d Judge states, in his referring letter, that the offence appears to him to amount to robbery by open violence, intimating of course that he is liable to the punishment prescribed for that description of crime, and recommends mitigation of the prescribed punishment. But to constitute the crime of robbery by open violence, as defined in the Regulations, it is requisite that persons

1820.
BALGOVIND'S case.

should go forth, if unarmed, in a gang; whereas the prisoner is not charged as having been accompanied by associates, or with having been armed. The Court, therefore, consider that it was competent to the third Judge to have passed a final sentence in this case, under the 5th clause of Section 8, Regulation XVII. of 1817, and at all events, that it was necessary for him to have passed the sentence to which he considered the prisoner liable under the Regulations, which has not been done. On a consideration of all the circumstances of the case, the Court sentence the prisoner to receive 25 stripes with a Korah, and to imprisonment and hard labour for seven years.

1820.
May 18th.
MYYA and BHOOWUN PASBAN'S case.

PHOOLEIL and PEERBUKSH,
against
MYYA PASBAN and BHOOWUN PASBAN.

Charge—HIGHWAY ROBBERY.

Sentence, on conviction of highway robbery, mitigated; the prisoners not appearing to be old offenders, and being in a state of ebriety at the time.

THESE prisoners were brought to trial on the charge above specified, at the 2d Sessions of 1819 for Zillah Sarun.

It appeared that the prosecutors and two other persons went to a bazar to purchase cotton, on the 6th of Bysack, or 4th of April last. On their way home in the evening, they stopped at a shop where spirits were sold, and where five men were drinking, amongst the rest the two prisoners, who asked the prosecutor Phooleil for some pice to get drink, which, on being refused, they separated.

Soon after the prosecutors and those with them also left the shop, to proceed on their journey. When they came near a nullah, they were attacked by five men, and severely beaten. The robbers effected their escape with some of the cotton, before two persons who were in a field close by could come to the prosecutors' assistance. The prisoners were recognized by both the prosecutors, and the two persons with them, who it appears immediately mentioned their names to those who came to their assistance.

The *futwa* of the law officer of the Court of Circuit convicted the prisoners of having attacked and beaten the prosecutors on the high road, and carried off some of their cotton; and declared them liable to discretionary punishment.

In referring the case, the Judge of Circuit stated, that he saw no reason to object to the *futwa*, as he was of opinion there could be little doubt but that the prisoners attacked the prosecutors on the high road, and beat them severely. He therefore passed the prescribed sentence; but at the same time recommended that the punishment awarded against them should be mitigated, as they did not appear to be old offenders, and as from the circumstance of their having been drinking just before they committed the act, they were probably in a state of intoxication, and not exactly aware of what they had done, a circumstance which was rendered the more probable by their having

come of their own accord to the Thana, when they heard that a charge had been preferred against them.

1820.
Myya and Bhoowur Pashan's case.

After an attentive consideration of the whole of the proceedings submitted with the case, the Court of Nizamut Adawlut, (present W. Leycester,) passed the following sentence.

The *futwa* of one of the law officers of the Nizamut Adawlut convicts the prisoners of having been accomplices in a highway robbery, attended with personal outrage, and declares them liable to discretionary punishment by *Acoobut*. The Court fully concur therein; and taking into consideration the grounds on which the officiating Judge recommends a mitigated punishment in their favour, sentence them each to receive 30 stripes with a Korah, and to imprisonment with hard labour for seven years.

VAKEEL OF GOVERNMENT, *against* JEY SINGH.

1820.
April 17th.
Jey Singh's case.

Charge—Theft and Wounding.

The prisoner was charged with being one of a gang, who, on the night of the 5th of January 1818, entered the house of one Nundram, with the intention of stealing, but being discovered, made their escape, after wounding three persons, of whom one, named Zorawur, died of the wounds he received, fourteen days afterwards.

The evidence of a convict having been taken with a view to the conviction of a prisoner charged with participation in a Dacoity for which such convict had already been sentenced, the Court ruled that his evidence was wholly inadmissable.

The Vakeel of Government stated the above circumstances, and added, that the robbers were traced by the print of their feet to Mouza Jahowur, where one Pudman was found wounded. He was there apprehended, and confessed his participation in the offence, implicating Jey Singh and Boodha. Pudman was tried, convicted, and sentenced to imprisonment in transportation for life. The prisoner Jey Singh was apprehended on the 17th of January 1820. At the Thana he confessed, that he with others, among whom was Pudman, went to Nundram's house, with the intention of stealing; that Pudman went into the house and wounded Nundram, who immediately seized him. Pudman called out to his associates to come to his assistance, on which the prisoner went in, and struck at Nundram with his sword; but the blow fell on Pudman, with whom Nundram was struggling: that the other inhabitants of the house were likewise wounded by the robbers, who then made their escape. Before the Magistrate, the prisoner admitted, that he set out with the gang, but did not enter Nundram's house, or wound any person. The witnesses substantiated the statement of the robbery and wounding, and proved that Zorawur died of his wounds fourteen days after the occurrence. The night being dark, none of the persons wounded were able to distinguish the features and persons of the assailants.

1820.

JEY SINGH'S case.

The prisoner's confessions at the Thana and before the Magistrate were proved by competent witnesses to have been quite voluntary. The principal evidence against the prisoner was that of the convict Pudman, who deposed that the prisoner was one of the gang, but that he did not go into the house, or wound any of the inhabitants. The prisoner in his defence stated, that he accompanied Pudman and the rest as far as the village in which the outrage took place, but finding that their intention was to steal, he quitted them, and returned home.

The law officer of the Court of Circuit convicted the prisoner, on his own confession at the Thana, of going armed at night into Nundram's house, together with Pudman and the others, and of making a blow at Nundram with his sword, which wounded Pudman, and of being one of a gang who, in an attempt to commit theft, wounded Zorawur in such a manner as to cause his death.

The Judge of Circuit fully concurred in this *futwa*. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having, in company with others, entered a dwelling house by night, with intent to steal, in prosecution of which design three persons were wounded, one of whom died of his wounds some days afterwards, and declared the said prisoner liable to discretionary punishment by *Acoobut*. The Court of Nizamut Adawlut, (present W. Leycester,) fully concurring in the *futwa* of the law officers, sentenced the prisoner to imprisonment in transportation beyond sea for life. The Court observed, that the convict Pudman, the associate of Jey Singh in the commission of the above crime, and who was on the 30th of January 1819, sentenced by the Nizamut Adawlut to imprisonment in transportation for life, was admitted by the Judge of Circuit as an evidence on oath in this case. The Court adverted to the strong grounds of objection against admitting a person so tainted, and so situated with respect to the prisoner, (by which was meant, that if they had been tried together, they might equally well have been made evidence against each other,) to become an evidence, and desired that a similar practice might not again be resorted to. With reference to the sentence passed against Pudman on the 30th January 1819, the Court desired that the Court of Circuit would call on the gentlemen who had been Magistrates or Acting Magistrates since that time, to explain why they had not carried the sentence of transportation into effect, as far as it belonged to them to do so; viz. by reporting to the Nizamut Adawlut that he was sentenced, which appeared not to have been done, and which, by the 4th clause of Section VIII. Regulation LIII. 1803, ought to have been done without delay.

1820.
June 6th.
MUSSUMMAUT BURRAEE'S case.

GOVERNMENT,
against
MUSSUMMAUT BURRAEE.

Charge—MURDER.

A woman enraged at some trifling quarrel with her husband, murdered her own child, by cutting its throat with a knife, and then attempted her own life. Sentenced capitally, notwithstanding mitigation suggested by Judge of Circuit, on the ground of her being in a state of temporary frenzy.

THIS prisoner was brought to trial at the 2d Sessions of 1819, for Zillah Backergunge, on the charge of having murdered her own child.

Information having been received by the Darogha of Thana Baophaul which led him to suspect that the daughter of the prisoner had been made away with by foul means, he proceeded to the village of Chiraukee, where she resided, and having ascertained the spot in which the child was buried, he caused the body to be disinterred for examination. It appeared that its throat had been cut: and the prisoner, shortly after her apprehension, confessed, that in consequence of her having received abuse from her husband, she in a violent fit of irritation had murdered her child, and had then attempted to put an end to her own existence. This latter assertion was corroborated by the appearance of a wound recently inflicted on the throat of the woman. She shortly afterwards pointed out the spot in which the murder was committed (a patch of jungle near her dwelling,) among the bushes of which a knife was discovered, with which instrument the prisoner confessed that she had perpetrated the deed. Her confession was in every respect free and voluntary, and duly attested. The husband of the prisoner was committed to take his trial along with her, on the charge of privity to the murder of his own child, and concealing his knowledge of the occurrence: but he was acquitted by the *futwa* of the law officer, which declared his wife guilty of the murder, and liable to suffer death. In this *futwa* the Circuit Judge concurring, released the husband of the prisoner; and in referring her case for the final sentence of the N. A. he expressed himself as follows:—"I have the honour to transmit the Magistrate's record of commitment, and Court of Circuit's, of the trial of the prisoner named in the margin, for the murder, on the 15th of October 1819, of her own daughter Mussummaut Tohfa, a child aged fifteen months, by cutting its throat with a knife, while the prisoner was suffering under a violent fit of passion, in consequence of an altercation with her husband from some trifling cause. I have only to add, that I lament the necessity of expressing my full concurrence in the law officer's conviction of the prisoner; but although insanity of mind cannot be imputed to the prisoner, as the cause at the moment of perpetrating the dreadful deed; a momentary phrenzy of the most extreme violence previously agitating the prisoner, and raising her at the time above all the restraints of reason, and the common fears and feelings of humanity, seems proved from the circumstance of her attempting her own life after injuring the child. Under these circumstances, I beg to recommend the prisoner to the mercy of the Court, as a fit object for some mitigation of the usual awful sentence." But the *futwa* of the law officers of the N. A. finding the prisoner guilty of wilful murder, and declaring her liable to

1820.

NIZAMUT BURKAR'S case.

Kissas; and the Court (present W. Leycester and S. T. Goad) seeing no sufficient reason for exempting her from capital punishment; sentence of death was passed upon her, and she was executed accordingly.

1820.

June 20th. Case of SUNAOOLLAH and others.

GOVERNMENT,
against
SUNAOOLLAH, ZUMEEROODEEN, EERUN SAH, ARZANOOLLAH, and ASHRUF.

Charge—ROBBERY and MURDER.

Five boatmen convicted of murdering the person in charge of the cargo, on the confession of one individual of the crew to that effect, and on their own confessions that they had sold the cargo, and appropriated the proceeds.

THE prisoners above named were charged with the murder of a traveller, a merchant, (name unknown,) on board a boat, and embezzling the amount of the cargo, consisting of betel nuts, the property of the deceased. The case came on at the 2d Sessions of 1819, for Dacca Jelalpore, in the month of Chyte 1225 B. S. by the law officer of which court, the prisoners were convicted of breach of trust; and by the same *futwa* a suspicion of the perpetration of murder was declared to attach to them.

The facts stated for the prosecution were that the prisoners (*Mullahs* of a boat,) the freight of which had been discharged, and a new freight of betel-nuts received on board at Gouree Hath, to take to Patna under charge of a kind of supercargo, styled a Churundar, put to death this person by strangulation, and fixing earthen pots to his legs, sunk him in the river: that they sold the freight, and appropriated the proceeds and the other contents of the boat to their own use, and then sunk the boat. This account rested upon the deposition of a person named Jurra, one of the crew, who was examined before the Magistrate, but had since died.

Sentenced to imprisonment in transportation for life. The body of the deceased not found.

Jurra, in his deposition, stated, that he mentioned the murder to a witness in the case, named Roushun; but Roushun, before the Court of Circuit, denied having received any such communication from Jurra. The sale of the betel-nut was clearly established by evidence, and the prisoners admitted that they did sell and appropriate to their own use a certain portion of the merchandize; and that, after the Churundar's death, which was occasioned by the Cholera Morbus, they sunk his body in the river. As they had thus admitted a breach of trust of great magnitude, which the Judge of Circuit expressed his opinion ought to be visited with very heavy punishment, not less than transportation for a term of years, and as they admitted besides another offence of great magnitude, which ought to be most diligently repressed among the class to which the prisoners belonged, namely, the concealment of the death of a person in charge of valuable property, the Judge referred the case for the final orders of the Nizamut Adawlut, expressing a hope that the highest measure of punishment known to the laws for the offences of plundering property, and

1820.
Case of SONAOOLLAH and others.

breach of trust, might be awarded to the prisoners, especially as he considered it only possible that they might *not* have perpetrated the murder of the *Churundar*. The *futwa* of two of the law officers of the Nizamut Adawlut convicted all the above prisoners on strong presumption of having perpetrated the wilful murder of a merchant (name unknown) in charge of property on board a boat to which they were attached as Jpoatmen, and of having embezzled the said property, and sunk the boat, and declared them liable to discretionary punishment by *Seasut*.

The Court, (present W. Leycester and S. T. Goad,) fully agreeing therein, sentenced them each to receive 39 stripes with a Korah, and to imprisonment with hard labor in transportation for life.

JUTTEE RAM, *against* JYE MUNNEE.

1820.
July 20th.
JYE MUNNEE'S case.

Charge—MUTILATION.

The law officers of the Nizamut Adawlut acquitted the prisoner, in consequence of the *Ibra* of the prosecutor, and her non-age. The Court did not concur in the *futwa*, but judged themselves incompetent to punish. The wilful act of a person supposed to be in her non-age is, in *Moohummudan* law, considered accidental.

THE prisoner was charged with cutting off the *membrum virile* of the prosecutor, to which charge she pleaded not guilty. The trial was entered in the calendar in the name of Juttee Ram as prosecutor; but in consequence of his absence, and refusal to prosecute, the Vakeel of Government conducted the prosecution.

It appeared from the proceedings in the case, that in the month of March 1820, the prosecutor bought the prisoner of her brother for 20 rupees, with the intention of subsequently marrying her. The prisoner, finding that he was impotent, induced him to follow her to a neighbouring river, where she undertook to find a remedy for his disorder. On arriving there, she persuaded him to submit to having his eyes covered with a cloth, upon which she cut off his penis with a knife, and threw both the amputated member and the instrument into the river. She then went home, and told her brother Jye Ram, that her husband was seized with dysentery, and lying very ill by the side of the river. Jye Ram accordingly went, and found the prosecutor sitting with his clothes covered with blood; and on hearing of the misfortune which had befallen him, had him conveyed to his own house. On her apprehension, the prisoner confessed the crime at the Thana, and on her subsequent examination before the Magistrate, confirmed her former statement, and exactly corroborated the account of the transaction as given by the prosecutor. On her trial before the Circuit Court, she behaved with the greatest simplicity. She was ignorant of her age, and of the names of her parents, denied that she had made the previous confessions, and asserted that the prisoner had mutilated himself, but was unable to adduce any proof of her assertion; and it was satisfactorily established that no coercion or undue influence had been used to extort her former confessions. She appeared to be

1820.
JYE MUNNEE'S CASE.

about 12 years old, and her brother did not think that she could be more, but was unable to specify her exact age. The evidence of her brother Jye Ram, and the circumstances of the case, left little doubt respecting the truth of the fact. However, near the close of the proceedings, Juttee Ram, the prosecutor, prayed for permission to file a *Razeenama*, and stated his entire forgiveness of the offence, his sincere wish to forego his suit, and his consequent absolute renunciation of all claims upon the prisoner.

The law officer of the Circuit Court gave the following *futwa*. "Whereas the prosecutor has filed a *Razeenama*, the prisoner is not liable to any punishment."

"*Question*. Supposing the prosecutor had not filed a *Razeenama*, but had persisted in his suit, what *futwa* would have been given?"

"*Answer*. Apparently the prisoner Jye Munnee is not more than 12 years of age, and the signs of maturity are not perceptible in her. Her Mofussil and Foujdarry confessions do not warrant the presumption that she is in her non-age; but the evidence of Jye Ram, her brother, superadded to her confessions, may be reckoned conclusive. Still the commission of the crime, as detailed in her two confessions, does give rise to a doubt, as it seems unreasonable to suppose a person of such tender years could perpetrate so cruel an action. Legally the wilful act *(Umud)* of such a person is accidental *(Khuta.)* In this case the prisoner Jye Munnee is convicted of the crime of accidentally cutting off the penis of the prosecutor, and is liable to the payment of *Deeut*." The Circuit Judge recommended the prisoner for pardon in consideration of her tender age.

The law officers of the Nizamut Adawlut expressed their opinion thus. "Whereas the prisoner Jye Munnee is in her non-age: therefore her Mofussil and Foujdarry confessions, stating that she wilfully and purposely cut off the prosecutor's penis with a knife, cannot make the prisoner liable for the above crime. But from the aforesaid confessions, which have been attested by the several witnesses before the Court, and from the evidence of Jye Ram, the prisoner's brother, that he saw the prosecutor after mutilation, having gone according to the prisoner's information, and found him sitting by the bank of the river with his clothes covered with blood, violent presumption of the crime of wilfully and purposely cutting off the prosecutor's penis rests on the prisoner. If then the prosecutor had not renounced his claims on the prisoner, she would have been liable on strong suspicion to *Tazeer* by imprisonment or otherwise, at the discretion of the *Hakim*; but in the present case, from the prosecutor giving *Ibra*, she is entitled to her discharge without imprisonment."

Question. (By Mr. C. Smith.) "Notwithstanding the prosecutor's *Ibra*, has the Hakim power to inflict *Tazeer* on the prisoner, by reason of her violation of the divine law, or for the sake of public example, or any other reason?"

Answer. "A minor does not incur punishment by reason of her violation of the divine law, or for the sake of public example, which in fact amount to one and the same thing; and exclusive of divine

or human rights, there is no other cause which can legally induce *Tazeer.*" 1820. JYE MUNNEE'S CASE.

Under these circumstances, a question arose, whether it was within the competency of the Court to award any punishment to the prisoner.

Mr. Leycester observed: "There is a palpable inconsistency in the two *futwas*. By the first, the prisoner, notwithstanding her non-age, is declared punishable, but the *Ibra* bars it; and her non-age is introduced into the second, to bar punishment at all. I am not sure but that we are conjuring up a shadow to defeat our competency to punish in this case. The clear object of Regulation XVII. 1817, is to enable us to punish, where the *futwa* does not award punishment." Mr. Goad was of the same opinion. Mr. C. Smith said: "It is clear to me, that we have no power to punish. Section IV. Regulation XVII. 1817, does not meet the case, the prisoner not having been acquitted." Mr. Leycester, adverting to clause 4, Section II. Regulation LIII. 1803, thought it might be a question, whether exemption on account of non-age at eleven years of age, as a general position, independent of any stated proof of imbecility of intellect, so as not to be conscious of the criminality of the offence, did not constitute *a special exemption or scrupulous distinction barring the penalty of conviction* in this case? Mr. Goad was inclined to be of the same opinion; but ultimately, however, the Court, (present Messrs. Leycester, Smith, and Goad,) passed the following sentence. "The Court do not find it within their competence to sentence the prisoner to punishment, and direct therefore that she be immediately released." It was also agreed and entered in the minutes, that the Court proposed to take into their consideration the propriety of proposing a new Regulation, to prevent the refusal to prosecute by the party injured being a bar to punishment in similar cases*.

* In pursuance of this resolution, and to meet some other cases in which the Nizamut Adawlut had found themselves incompetent to pass sentence in opposition to the *futwas* of the law officers, although such *futwas* were evidently inconsistent with the general principles of justice, Mr. Leycester submitted to Government in January 26, 1821, the draft of a Regulation for increasing the discretionary powers of the court. In his minute accompanying the draft, he observed, on reference to this trial, that "the Court found itself under the necessity of releasing the prisoner, not from an idea that she was not deserving of punishment, nor in mercy, but from the want of competency to punish. The distinction taken by the law officers may be briefly stated, that the act constituted a private, not a public wrong, and that if the individual relinquished his claim, the public prosecutor had none whatever."

The 4th Regulation of 1822 was consequently promulgated, the 3d Section of which is intended particularly to provide for the recurrence of questions of this nature.

1820.
July 31st.
POORUN DOSS'S case.

GOVERNMENT,
against
POORUN DOSS.
Charge—MURDER.

Prisoner convicted, on his own confession solely, of having killed his nephew, who had committed adultery with his wife. Sentenced to seven years imprisonment, as, though he confessed the act was premeditated, yet the means used were only two blows, with a moderate sized stick, and the meeting with the deceased was accidental.

THE prisoner Poorun Doss was charged with the murder of his nephew Teelook Doss. The only evidence against him was his confession before the Police Darogha, which was satisfactorily proved to have been voluntarily given. In that confession he stated, that having been informed, in Cheit of the year preceding, by his wife, that the deceased had three times committed adultery with her by force, whilst living in his (the prisoner's) house, and this circumstance becoming known in the village, and a man named Muhadhun Muhtoon having sent for the prisoner, and imparted to him that he had heard what had passed, and urged him at the same time to murder Teelook Doss, he (the prisoner) said the country belonged to the English, and he could not do so; whereupon Muhtoon replied, that no person would seek after Teelook Doss. That the prisoner bore this in mind, and in Maug following, meeting the deceased at the village of Cota, the latter joined the prisoner; when arriving in a jungle, towards the evening, the prisoner struck the deceased two blows with a *Chobdust*, on the back of the neck, when the deceased fell dead, and the prisoner dragged away the body, and threw it into a cavity.

This was the whole of the case. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of culpable homicide, and declared him liable to pay the *Deeut*; conviction of murder being barred by the nature of the weapon, which was a small club or stick.

The 4th Judge of the Court of Nizamut Adawlut (S. T. Goad) expressed himself of opinion, that though the act of the prisoner was premeditated, yet as his meeting with the deceased was accidental, allowance should be made for the influence which jealousy and shame may have had upon the prisoner in impelling him to strike the deceased the two blows with a stick, which appears to have been a *churree*, or one of small dimensions; and that under the *futwa* of the law officers, imprisonment for seven years would be an adequate punishment. The officiating Judge (C. Smith,) concurring in this opinion, sentence was passed accordingly.

GOVERNMENT,
against
HUREESINGHA.
Charge—MURDER.

1820.
Aug. 9th.
HUREESINGHA'S case.

It being proved on the trial of a prisoner charged with murder, that he had been desired by the Police officer to fear not, but to tell the truth: held that this is not sufficient to invalidate a confession made by him, and corroborated by circumstances.

THE prisoner in this case was arraigned for murder at the first sessions of 1820 for Zillah Fúrruckabad. The case was briefly as follows. Mussummaut Tijea, the sister of the prisoner, had been missing some days, when a conversation held by the prisoner and his relations, during the night time, was overheard by a person named Omaida; in which the prisoner stated, that in shedding the blood of his own sister he had done well, in that he had prevented his sister's becoming a Moosulmaun. Omaida gave instant information at the Thana, upon which the Thanadar went to Mouza Rara, and sent for the prisoner, his two brothers Hurreea and Bulla, and their father Mona. The latter was not to be found; but Musst. Rummeea his wife came: from these persons the Thanadar could gain no information, further than that they had not seen Musst. Tijea for four days, and that in consequence of having been beaten she had run off. Further enquiry having been made for her by the Thanadar, he learnt from one Ramkishna and his wife, that four days had elapsed since Tijea came to their house at 12 o'clock, and prepared bread from some flour which she had brought with her, and ate it. In the evening, her brothers Hurrea and Hurreesingha came and took her away. This having been ascertained, the prisoner Hurreesingha, after much prevarication, declared that he had killed his sister, by cutting her throat, and had thrown her body into a well, and that he would shew the Thanadar where it was. Accordingly the prisoner took the Thanadar to the well in which the body was found. There was also an appearance of blood having been spilt on the ground close to the well. Before the Magistrate, the prisoner told an incoherent story of his sister having been deranged, and of her having destroyed herself, and that through fear of the Government he had thrown her body into a well, close to his house.

Before the Court of Circuit, the prisoner pleaded not guilty; but his confession at the Thana was fully substantiated by three credible witnesses. Kiamoodeen, and Poorun Mull, who accompanied the Thanadar to the well, distinctly deposed that the prisoner pointed out to the Thanadar the spot where the body was concealed.

The law officer of the Court of Circuit declared the prisoner convicted of *Kutl i umd*, or wilful murder, in which sentence the Judge concurred, thinking the prisoner deserving of death, and recording his opinion, that he was not aware of any circumstance that could be urged in mitigation of the punishment. The *futwa* of the law officers of the Nizamut Adawlut was to the same effect; but the Court, on weighing the proceedings, deemed it necessary to order further investigation; and the case was, therefore, returned with the following observations and orders.

"The Court observe, that the issue of this trial depends entirely on the statements of the prisoner. These statements are two; first, that

1820. HUREE SINGHA'S case.

Tijea cut her own throat, and that through fear he had thrown the body into the well. This is before the Magistrate; and secondly, that he cut his sister's throat. This is before the Thanadar. But it is not his first statement. He had in a previous deposition before the Thanadar denied the charge, adding that she had run away, in consequence of Shumsoodeen beating her, and again stating that his brother Hurree, in consequence of people saying that she was a reprobate woman, and not fit to be kept at home, had turned her out, and conveyed her to the village of Buster. Though these two explanations are contradictory, it is pretty clear that they, with the denial, were voluntary, which is not at all so clear of the confession obtained subsequently thereto.

It is very true, that three witnesses depose that the prisoner so confessed without menace or threatening; but they do not state, that the prisoner was not encouraged to confess under some hope or promise from the Thanadar. But the Thanadar expressly states in his petition, under date the 21st November 1819, that suspecting Huree or Hureesingha had killed their sister, he questioned them with *Tusullee* and *Dilasa*, and was going again in search of the girl, when Hureesingha confessed the murder.

It is therefore clear that the confession was not made voluntarily, though it is not at present clear what may have been the degree and the nature of the *Tusullee* and *Dilasa*.

The Court deem it necessary that this point should be cleared up, and direct that the Darogha Syud Nyamut Alee, and any others present, may be examined at the ensuing session, as to the nature and degree of the *Tusullee* and *Dilasa* under which the confession was obtained: that the witnesses thereto, viz. Mukarun Khan, Poorun Mull, and Kiamoodeen, be at the same time re-examined as to the fact of *Tusullee* and *Dilasa*, and whether they were present when he first confessed the murder, or whether it appeared to them, from the mode of questioning him, or the mode of his answer, that he had previously confessed.

The Court further desire that the Darogha Syud Nyamut Alee may also be questioned by the Judge of Circuit, as to why, in his more detailed report of the 23d of November, he dropped the circumstance of *Tusullee* and *Dilasa* recorded in his previous petition of the 21st, an omission which very obviously tended to throw a cloud upon that occurrence.

The Court also desire, that three or four of the neighbours of the deceased may be examined at the same time by the Circuit Judge, regarding the character of the deceased; whether they considered her at all a reprobate woman, and likely to abandon her cast, and turn Mahomedan, whether there was any report thereof, or any other peculiarity in her character, which might on the one hand have excited the anger of her family, or, on the other, led her to the crime of suicide."

In conformity to these instructions, further proceedings were held by the Court of Circuit, and submitted for the final orders of the Nizamut Adawlut.

1820.
HUREE SINGHA'S case.

From the tenor of the depositions of the persons who were examined in pursuance of the orders above detailed, it did not appear that Nyamut Alee, the Police Darogha of Suhawur, had recourse to any steps that could be construed into a positive encouragement to induce the prisoner to confess his guilt. On the contrary, it appeared that the confession taken before that officer was not made by the prisoner, under the impression or expectation that he would escape with impunity.

In consequence of the very small size of the hamlet in which the deceased and the defendant resided, it was not practicable to procure much evidence to the disposition, conduct, and general character of the former, and the little that was obtained was of a very unsatisfactory nature. The testimony of a person named Kashee regarding the deranged state of the deceased's mind was, in the opinion of the Judge of Circuit, who held the further proceedings, entitled to no credit, from the very imperfect and confused ideas which he appeared to have on the subject. After due consideration of the whole of the proceedings connected with the trial, the 4th Judge of the Nizamut Adawlut (S. T. Goad) recorded his opinion in the following terms.

"In this case it is proved, by the evidence of Omaida, that he heard Mussummaut Rumeea, the prisoner's mother, accuse the prisoner of having murdered her daughter, and ask him why he had done so; in reply to which accusation, the prisoner said he had killed her, which was better than that she should become a Moosulmaun. Information was given by Omaida to the Darogha, and the prisoner was consequently apprehended. At first he denied the murder, but upon being told by the Darogha not to fear, but to speak the truth, he acknowledged the murder, and offered to point out the body. He took the Darogha to a well, where the body was found with the throat cut; and there the prisoner, in the presence of several persons, repeated his confession of the murder of his sister, when his confession was reduced to writing.

"It is also proved, by the evidence of Ramkishna, that Tijea, the deceased, came to his house, and after staying there some time, went away with the prisoner, since which the witness knows not what became of the deceased. This evidence, however, does not prove that the day on which the deceased went away with her brother, was the day on which she met her death. The confession of the prisoner before the Magistrate is, that the deceased cut her own throat, and that he threw the body into a well, and concealed what he had done. If this were the truth, it is in my opinion inconceivable that the prisoner, when desired by the Darogha not to fear but to speak the truth, should have said any thing more than this, much less that he should have repeated his confession of the murder, when he pointed out the body at the well. I agree in the *futwa* of the law officers, and think, that the prisoner should be sentenced to suffer death. Mussummaut Rumeea ought to have been examined, but she could not be found."

The opinion of the 2d Judge (C. Smith) was to the following purport.

1820.
HUREE-SINGHA'S case.

"I agree with the 4th Judge, as to the proof of the murder, the confession being powerfully corroborated by the circumstances, and there being no sufficient evidence in my opinion to establish that the prisoner was either terrified or inveigled into making it: still it does not appear to have been a murder of revenge or malice. The motive is expressed in the words overheard by Omaida, the first witness اگر بخانہ مسلمان می افتاد باز چہ می شد which passage receives confirmation from the deposition of Kashee, examined in the second enquiry by Mr. Perry. I think, therefore, that the sentence of death should be commuted for one of imprisonment for life in the Furruckabad jail." The prisoner was ultimately sentenced as suggested by the 2d Judge, the 4th Judge consenting to remit the capital punishment.

1820.
Aug. 14th.
RAMKUNHAI'S case.

GOVERNMENT, *against* RAMKUNHAI.

Charge—FORGERY.

To antedate and post-date deeds being a common practice among the natives, the Court did not admit this fact to be evidence of forgery.

THE prisoner was charged with forgery, and his trial came on at the 1st Sessions of 1821, for Zillah Backergunge.

The case was a simple one; but a difference of opinion between the Judge of Circuit and his law officer, occasioned its being referred to the Nizamut Adawlut. The prisoner's father got a Talookdaree Pottah of some land, from the person who had purchased a defaulter's estate at the public auction. The property having been subsequently conveyed by private sale to another individual, the latter wished to oust the possessor. The prisoner instituted a suit, and produced the title deed, supposed to be forged, for which he was committed for trial. The deed was dated 25th Assin, 1213, or 9th October 1806, and the paper on which it was written, was sold on the 27th Sawun 1214, or 10th August 1807.

The prisoner denied the forging the paper; stated that he did not know it was forged, and he produced it in evidence through perfect ignorance, as his Gomashta or agent (who, it is to be observed, was then dead) had placed it amongst his Zemindaree papers, and that he himself considered it a valid deed.

The law officer of the Court of Circuit acquitted the prisoner, on the ground, first, that it was possible the stamp vender might have written 1807 by mistake, instead of 1806; secondly, that the prisoner was not of age when the deed was written; and thirdly, that, when of age, he probably did not know that it was a forged deed, or would not have produced it in Court. In referring the case for the final judgment of the Nizamut Adawlut, the Judge of Circuit expressed his opinion of its merits in the following terms. "I do not consider the defence entitled to belief; indeed I suspect the

prisoner knew as much of the real nature of the deed as his Gomashta did; at all events, I cannot deem his plea sufficient, as he ought to have been assured of its validity before he ventured to produce any deed in Court. I cannot admit the probability of the vender having made a mistake; but if it does not appear that the prisoner forged the deed, that circumstance might be considered in mitigation of punishment. I do not suppose that the prisoner would have produced the deed in Court, had his knowledge of English shewn him how easily the forgery might be detected: the authentication of stamps in fact, and endorsement of the date of sale, are the rocks upon which these offenders are usually cast, and is the best evidence of guilt, in cases otherwise difficult of proof."

1820. RAMKUNHAI'S case.

On a consideration of the proceedings of the case, the officiating Judge of the Nizamut Adawlut, (C. Smith,) recorded his opinion to the following effect. "The prisoner is now not eighteen, and at the date of the deed said to be forged must have been four or five years of age. No forgery whatever is proved, in my opinion; that the English date corresponding to the Bengal date is many months prior to the date of the sale of the stampt paper, not necessarily making it a forgery. To antedate and post date papers is very common among the natives, without any fraudulent purpose. Both the Circuit and our *futwa* concur in acquitting the prisoner. I differ with the Judge of Circuit, and am of opinion that the prisoner should be immediately released."

The fourth Judge, (S. T. Goad,) concurring in the above opinion, the prisoner was acquitted.

BHOLANATH and Others, *against* CHAND HOLDAR and Others.

1820. Aug. 17th. Case of CHAND HOLDAR and others.

Charge—MURDER.

It is irregular not to hear witnesses named for the defence, on the ground that they have been already heard for the prosecution.

AT the 1st Sessions of 1820, for Zillah Hooghly, Chand Holdar, Petumber Bunnorjea, Kumul Doss, and Goohee Moosulmaun were arraigned for the murder of Mussummaut Beehun. It appeared in evidence, that for nearly twenty years the deceased had cohabited with Chand Holdar, whom she left two years previous to her death, in consequence of his having struck her, and afterwards connected herself with Ramchand Karar, (who was the principal witness for the prosecution,) on which account her son Petumber had frequently quarrelled with her, and at one time threatened to hang himself, in consequence of the disgrace which herself and family had incurred by her connecting herself with a man of an inferior caste. On the evening previous to the murder being committed, Chand Holdar, Petumber Bunnorjea, and Bishennauth were seen by Ramchand Karar consulting together near the house of the deceased. According to his statement, Petumber came home at about ten o'clock on

1820.

Case of CHAND-HOLDAR and others.

that night, and to induce his mother to quit the room (in which herself, Ramchand Karar, and her two children, Bykunt Bunnorjea and Musst. Puddo, were sleeping,) he begged her to rise, and give him something to eat, which she said she would willingly do, if he could procure a light. He replied, that there was one in the cook-room, on which the deceased went out to him, but shortly afterwards returned, and told Ramchand Karar that several men had come into the compound. At this time, according to the statement of the said Ramchand Karar, Chand Holdar seized her, and struck her with a *Dao* on the throat and face, and dragged her body to the cook-room door. Kumul Doss lighted two torches, with which he burnt the body of the deceased, and Goohee Moosulmaun was standing in the court-yard as an aider and abettor of the transaction. The *futwa* of the law officer of the Court of Circuit declared, that the evidence was insufficient for the conviction of the prisoners, and that they were consequently entitled to their release. The Judge of Circuit, however, not concurring in the *futwa*, referred the case for the decision of the Nizamut Adawlut, observing, that there was every reason to believe that Petumber instigated Chand Holdar and the others to commit the murder, and that this suspicion was further confirmed by his having immediately made his escape, and having tried to deceive the Police officers and his neighbours by a report that a Dacoity had been committed at his house, which proved on enquiry to be utterly false. On perusing the proceedings of the trial, it appeared that the prisoner Petumber, on being questioned as to what witnesses he was desirous of summoning in his defence, replied by naming two individuals who had already been examined in support of the prosecution, and that the Judge of Circuit refused to summon them, assigning as a reason, that they had already been examined, meaning thereby probably, that the prisoner had already had an opportunity of questioning them relative to any facts he might have wished to alledge in his defence; but the Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,) noticed, for the future guidance of the Judge of Circuit, that it was no correct ground for the rejection of the witnesses of the prisoner Petumber, that they had been examined on the part of the prosecution, as it was clearly at the prisoner's option to delay putting any questions to them until his own defence had been completed, and to support which the witnesses apparently were named.

The prisoners were ultimately acquitted.

MUSSUMMAUT SOOJURMUNEE, *against* HEERARAM CHEITH.

1820. Aug. 22d. HEERARAM CHEITH'S case.

Charge—MURDER.

THE prisoner was tried at the sessions of 1820 for Zillah Ramgurh, being charged with the murder of the prosecutrix's husband.

Prisoner confessed at the Thana, that he killed with an arrow a man who had come to him for a debt, and who would neither let him eat nor drink.

The only evidence against the prisoner was his own confession at the Thana. He stated, that the deceased came to demand rent from him, and oppressed him so much, that at last he shot him with an arrow.

Before the Magistrate, the prisoner stated that to free himself from the demand of the deceased, he offered to give him a fowl, and was about to shoot at it with an arrow, when the deceased with a club struck his arrow, which caused it to go off, and shot the deceased, which killed him.

There being no other evidence, the capital punishment was remitted, in consideration of the provocation.

The *futwa* of the law officer of the Court of Circuit, stating that the confession before the Magistrate was most to be relied upon, convicted the prisoner of accidental homicide, and declared him liable to the penalties of *Deeut*. The Circuit Judge, in referring the case, stated, that he concurred in the above *futwa*, and did not consider the prisoner deserving of any punishment: that consequently he had passed no sentence, but submitted the trial for the final orders of the superior Court. The fourth Judge of the Nizamut Adawlut, (S. T. Goad), expressed his opinion to the following effect. "The prisoner Heeraram Cheith is charged with the murder of Chamod, by shooting him with an arrow. The only evidence against the prisoner is his confession before the Darogha, which is proved, and in which he admits, that he wilfully shot the deceased, who had come to his house to demand rent, because he refused to let him eat or drink until he paid the demand. In his deposition before the Magistrate, he attributes the death of the deceased to an accident. All the law officers of the Nizamut Adawlut convict the prisoner of wilful murder, and declare him liable to *Kissas*; and I agree with them, because the story told by the prisoner before the Magistrate is improbable and incredible, and his first confession before the Darogha is consistent with the fact that the arrow passed quite through the body of the deceased. The prisoner also fled, after having committed the act.

Doctrine of circuit law officer overruled, that prisoner having subsequently stated before the Magistrate the death to have been accidental, such statement should be received, as being most favourable to the prisoner.

In consideration, however, of the provocation given by the deceased, I am of opinion that the prisoner should be sentenced to imprisonment for life."

The officiating Judge (C. Smith) took a different view of this case, expressing himself in these terms. "The *futwa* of the Circuit law officer is *Kutl i khuta*. The Judge of Circuit might have disposed of the case without reference, under Section III. Regulation IV. 1797, and did not refer it because he thought his power not sufficient to inflict an adequate punishment, but because, concurring in the *futwa* of accidental homicide, he thought the prisoner deserving of no punishment at all.

1820.

HEERARAM CHEITH'S case.

"Even in a very clear case, I should be reluctant to meet such a reference with a sentence of imprisonment for life; and this case appears to me to be one of great uncertainty.

"I cannot therefore concur with the 4th Judge, and there being no evidence but two varying confessions of the prisoner (the unfavourable one of the two taken at the Thana, where confessions are always suspicious,) I deem it safe to lean to the Circuit Cauzy's maxim of crediting the *akhuffoolkoulyne*, that is, the more favourable of two contradictory statements; and think the Judge of Circuit right in his opinion, that the prisoner should be released without punishment."

The 2d Judge, Mr. Leycester, expresed his opinion as follows.

"I agree with the 4th Judge in sentencing the prisoner to perpetual imprisonment. I do not think the course of justice should be arrested, because the Circuit Judge agreed in a *futwa* manifestly contradictory to the Moohummudan law, and against the principle on which the criminal Courts are daily acting." The prisoner was accordingly sentenced to imprisonment for life.

1820.

Sept. 5th.

Case of ATTABOODEEN and others.

RAMCHUNDER and KISHNANUND, *against* ATTABOODEEN and Others.

Charge—DACOITY.

In a case of four prisoners charged with Dacoity, the second Judge voting for the acquittal of three, and the conviction of one; the fourth Judge, for the conviction of all; and the officiating Judge differing from both his colleagues, voting for the acquittal of three, and the conviction of one as

A GANG of Dacoits, armed with *lathees* and swords, attacked and plundered, on the night of the 27th October, the house of the prosecutors, Ramchunder and Kishnanund, in the village of Bamun Danga, Purgunna Lushkurpore, the former of whom was robbed of property to the amount of 40 rupees, and the latter of property to the amount of 150 rupees. On the same night, another person named Kumul Sircar was also robbed by the Dacoits, of property amounting in value to 46 rupees, no part of which being recovered, he did not appear in the prosecution. The prisoners were tried at the 2d Sessions of 1819, for Zillah Rajeshahye.

A little before daybreak, and a few hours after the occurrence of the Dacoity, Koranoo, Chowkeedar at the Pakreea Kalee silk manufactory, (which place is but three miles from the village in which the Dacoity was committed,) observed four men travelling in a suspicious manner, each of whom carried a bundle; and, with the assistance of some of the inhabitants of the village, who appeared as witnesses on the trial, seized the prisoner Attaboodeen. The other three men threw down their bundles, and fled; and they were not at the time recognized. They were subsequently, however, apprehended on the information of Attaboodeen, who named them as his associates. On trial, the prisoner Attaboodeen asserted in his defence, that when he was seized, he had no bundle in his hand: that he did not know where the witnesses found the property: that it being the time of the *Mohurrum*, he and the

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other three prisoners were proceeding to a village called Baga, to read the *murseea,* and had arrived near the silk manufactory, when Koranoo Chowkeedar and some other persons seized him. Durgahy, Bawool, and Moocheah set up the same kind of defence. They stated, that on the night on which the Dacoity occurred at the prosecutor's house, they stopped in their way to the village of Baga, at the house of a man named Kepoo, during the whole of that night; and after performing their devotions at that place, on their way back to their homes, they heard of Attaboodeen's apprehension. None of the prisoners were, however, able to establish any of the circumstances alledged in their defence. The property found on the prisoner Attaboodeen, and that in the bundles of his associates, who absconded, were recognized by the prosecutors, as being part of the property of which they had been plundered.

receiver only. Sentence issued under the signature of the three Judges on the several prisoners, conformably to the majority of opinions.

The law officer of the Court of Circuit, in his *futwa,* declared the four prisoners convicted of Dacoity on strong presumption, and liable to *Tazeer i shudeed;* concurring with which opinion, the Judge of Circuit passed the sentence prescribed for that offence by Regulation VIII. of 1808, namely, 39 stripes of a Corah, and imprisonment in transportation for life. The *futwa* of the law officers of the Nizamut Adawlut also convicted the prisoners of the same offence. The second Judge of the Court (W. Leycester) was of opinion, that Attaboodeen should be convicted, but doubted whether there was sufficient evidence to touch the other prisoners implicated by him. Though they said, in their defence, that they were in company with Attaboodeen, yet they did not acknowledge any property having been thrown down by or found upon them, the proof of which convicted Attaboodeen, nor did they acknowledge any crime whatever. He did not think their statements entitled the Court to say decidedly, that these three persons were conveying away property, which they had obtained by Dacoity, and that they, throwing it down, ran away on being attacked by the Chowkeedars; and he was of opinion, therefore, that they should be acquitted for want of evidence. The fourth Judge (S. T. Goad) differed from the 2d Judge, and concurred with the law officers in the conviction of the four prisoners, Attaboodeen, Durgahy, Bawool, and Moocheeah, and declared his opinion, that the sentence passed on them by the Judge of Circuit should be confirmed.

The officiating Judge (C. Smith) expressed his opinion in the following terms.

"I concur with the 2d Judge, as to the unsatisfactory nature of the evidence against Durgahy, Moocheeah, and Bawool, and am of opinion that they should be acquitted and released. With regard to Attaboodeen, I differ both from the 2d and 4th Judge. I think there is no evidence whatever of his being actually present and a perpetrator. The single fact established is, that he was stopped 1½ coss from the village where the robbery was committed, with part of the plundered property: that under the circumstances, there is a strong presumption of his having received that property, knowing it to be plundered, I hold to be clear, and for this offence I would sentence him, (he is 50 years of age,) to seven years imprisonment, with labour,

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and 10 strokes of the Corah." Under these circumstances, the sentence of the Nizamut Adawlut was issued in the manner following.

"The Court having duly considered the proceedings held on the trial of Attaboodeen and others, charged with Dacoity, and the *futwa* of their law officers on the said trial, pass the following sentence.

"The *futwa* of two of the law officers of the Nizamut Adawlut, convicts the prisoner Attaboodeen, on strong presumption, of Dacoity, and declares him liable to discretionary imprisonment by *Acoobut*. The second and fourth Judges of the Nizamut Adawlut concur in the conviction of Attaboodeen, and confirm the sentence of thirty-nine stripes with a Corah, and imprisonment in transportation with hard labor beyond sea for life, passed upon him by the officiating Judge of Circuit.

"The second and officiating Judges of the Nizamut Adawlut, not being satisfied with the proof adduced against the prisoners Durgahy, Bawool, and Moocheah, do not deem it proper to sentence them to suffer any punishment under the *futwa* of their law officers, and direct that they be immediately released."

1820.
Sept. 11th.
Case of RAMSOONDUR and others.

GOOROOPERSHAUD CAWORA,
against
RAMSOONDUR and Others.

Charge—ADULTERY, SEDUCTION, and CONNIVANCE THEREAT.

By the Moohummudan criminal law, persons who harbour adulterers are punishable by *Acoobut*.

THE prisoners were tried at the Suburbs of Calcutta monthly Sessions for July 1820. The object of the Judge of Circuit in making the reference was fully detailed in the following letter. "I beg you will lay before the Court the trial of Ramsoondur, Mussummaut Goee, Jugurnath, and Nurhurree, charged in the Magistrate's calendar as follows. Ramsoondur for seducing Mussummaut Goee, knowing her to be the wife of the prosecutor. Mussummaut Goee for eloping from her husband's house, and for committing adultery with Ramsoondur. Jugurnath and Nurhurree for connivance, and sheltering Ramsoondur and Mussummaut Goee in their houses. The *futwa* of the law officer has convicted the whole of the prisoners of the respective offences laid to their charge, and declared them all liable to discretionary punishment by *Tazeer*. I object to this finding. There is no doubt whatever that Mussummaut Goee quitted her husband's house, and lived for some days in adultery with Ramsoondur, (though there is no proof of seduction, and the female prisoner states that she quitted her husband's house in a moment of anger, created by the ill-treatment she received from him,) for they both confessed as much before the officers of the Magistrate. But I object to the legality of the confessions themselves, as it appears they were made by the prisoners, and taken in the *dufter khanah* of the Magistrate's office by the native officers, and during the absence of the Magistrate. Even

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the whole of the subscribing witnesses to the confessions do not appear to have been present during the whole of the time that the confessions were making. The confessions were taken on the 6th of July, and on the 8th of the month the prisoners appear to have been brought before the Magistrate, and did, no doubt, repeat their confessions, or admit that they had made them, as the Magistrate under his own hand attests that the confessions were voluntarily given before him on that day, though there is no other proof of this circumstance than the above attestation. However, as I am not aware of any Regulation authorizing the native Foujdaree officers to take confessions, I am of opinion that they are not admissible evidence, and that the Courts of Circuit cannot convict upon such evidence only. It is clear also, that Jugurnath and Nurhurree did receive the two former prisoners into their houses; but as the Regulations have not, to my knowledge, declared such conduct to be an offence, and punishable by the Circuit Courts, or indeed by any Courts, I feel myself precluded from sentencing them to punishment, even if their confessions were not liable to the same objections as those of the former two prisoners. I beg it to be distinctly understood, that this reference is not made to expose the mode of conducting business in the Magistrate's office, or to call down upon the Magistrate the censure or displeasure of the superior Court. The Magistrate of the Suburbs must have a great deal of business to transact; indeed I can fancy that he is so completely overwhelmed with the duties attached to the various offices he holds, as not to find time to take the confession of every confessing prisoner; but, if this be the case, it appears to me, that his assistants should be employed on such duties in preference to his native officers. The confidence which confessions made in the Foujdaree Courts claim, arises principally from the high characters of the individuals who preside over those Courts; and although the native officers in the present instance may have conducted their enquiries with every fairness and propriety, still the confidence given to their masters cannot be transferred to them, from press of other business, or from whatever other cause. The ground of the commitment in this case appears to me to be faulty and defective; and although I am satisfied of the guilt of the prisoners, I think they are entitled to claim the benefit of legal disabilities of this nature. I am, therefore, of opinion that they ought to be released. The decision of the superior Court in this case will determine two points of considerable importance. First, whether confessions made before native *Omlah* can injure those making them. Secondly, whether giving house room to adulterers is considered an offence, and liable to punishment. The determination of the first question will be a rule of conduct to the lower Courts. The determination of the second question, if it be decided to be an offence, and punishable by our Courts, will without doubt be promulgated in the shape of a Regulation for the information of the community at large."

The *futwa* of the law officers of the Nizamut Adawlut convicted all the prisoners but Nurhurree of the acts laid to their charge, with

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the exception to that part of the accusation which related to seduction. On the merits of the case, the fourth Judge, (S. T. Goad,) recorded his opinion to the following effect. "I am of opinion that the prisoners cannot legally be convicted upon the confessions made by them before the Foujdaree *Omlah*, on the 6th of July, and repeated before the Magistrate on the 8th, and that the Magistrate should be censured for allowing his Foujdaree officers to take written confessions, and for certifying on the face of those depositions that they were given before him (the Magistrate) on the 8th, whereas in point of fact they had been previously written down by the *Omlah* on the 6th, (as the originals themselves prove,) and that the Magistrate should be strictly prohibited from allowing similar magisterial acts to be performed by his officers in future. Independent of these confessions, there is no evidence warranting the conviction of the prisoners. Musst. Goee besides appears to be an unchaste woman, and to have eloped twice before; so that the crime of seduction cannot be proved against Ramsoondur, and the commission of adultery with such a woman is hardly any thing more than an act of immorality. I therefore think the prisoner ought to be acquitted and released, as well as Nurhurree, who is acquitted by the *futwa*." But the officiating Judge (C. Smith) differed from his colleague, relative to the mode in which the confessions were taken, as will be seen from the following memorandum of his opinion. "I agree entirely as to the acquittal and release of all the prisoners. As to the confessions, the Magistrate's attestation of the 8th of July, clearly means no more than that on that date the prisoners acknowledged before him the confessions made on the 6th. The case in which this course has been pursued is of no great consequence; and the same course is, I am persuaded, followed in almost every district of the country, in cases of infinitely greater moment; nay, I am convinced that our records would shew innumerable cases of sentence of death and of transportation for life passed upon confessions taken in no other manner: *necessitas quod cogit defendit.* The press of business is such, that the Magistrates could not get on without it;—and if confessions taken at the Thana, in spite of denial before the Magistrate, are relied on, why are we to be more scrupulous as to confessions taken at the sudder station by the Magistrate's *Omlah*, and afterwards confirmed before the Magistrate, especially in cases of misdemeanor such as this? I think it, on the whole, very far from adviseable to issue any such strict prohibition as that suggested by the fourth Judge." The fourth Judge was still of opinion that the practice was irregular; but no other Judge being present in Court at the time, he deferred that part of the case for future consideration, in order that the accused might be immediately liberated. The usual sentence of acquittal was issued accordingly.

1820.
Sept. 14th.
MUSSUMMAUT NUNHYA'S case.

NEEL KAUNT,
against
MUSSUMMAUT NUNHYA.
Charge—ARSON.

THE prisoner Nunhya was at the 2d Sessions of 1820, for Zillah Cawnpore, charged with having wilfully set fire to, and thereby destroyed the thatched roof of a hut, situated in the cantonment at that station, and belonging to Neel Kaunt, a private in the 14th Regiment Native Infantry.

The injury sustained by the said Neel Kaunt, did not form part of the original design of the defendant: but, though accidental, it was the result of a malicious act, and of course could not subtract from the criminality of the prisoner's conduct, which, in such a place, might have occasioned very extensive mischief. The Judge of Circuit represented, that he was induced to bring this case to the notice of the Nizamut Adawlut, not on account of the crime itself, but with reference to the degree and nature of the proof on which the accused had been found guilty. This evidence consisted solely and simply of the prisoner's unconstrained and voluntary confession, which was not formally taken, and duly recorded and attested in the presence of any one of the constituted authorities of Government, but made in a verbal manner to two persons, (whose veracity there could be no reason to doubt,) wholly unconnected with the judicial establishments, and antecedently to the prisoner's having been taken into custody.

The depositions of two private individuals to the confession made before apprehension, & not reduced to writing, of a girl eleven years of age, held sufficient for her conviction by the Moohummudan law; but rejected by the Nizamut Adawlut, especially with reference to the tender years of the prisoner.

The *futwa* of the law officer of the Court of Circuit, by declaring the prisoner convicted on the above proof, had pronounced it to be legal and sufficient evidence. The Circuit Judge expressed his opinion, in referring the case, that his law officer had taken a correct view of the meaning and intent of the Moohummudan law: but he added, as that interpretation was so directly at variance with *futwas* which he had seen delivered by other native lawyers on similar occasions, and as, moreover, the Regulations of Government did not enter into any specific detail on the subject, he felt desirous of obtaining, as a rule for his future guidance, the determination of the Nizamut Adawlut on a point, regarding which there appeared to exist among the law officers so great a conflict of sentiment. "The final sentence passed by the Nizamut Adawlut in this case, (present W. Leycester and S. T. Goad,) was in the following terms. "The *futwa* of two of the law officers of the Nizamut convicts the prisoner, a girl 11 years of age, of Arson, and declares her liable to discretionary punishment by *Tazeer*. The Court, observing that the prisoner's conviction rests solely on the deposition of two witnesses, who state that she made a confession of the crime before them, and further adverting to the tender years of the prisoner, are led to mistrust the truth of the confession made by her, and direct that she be immediately released."

1820.
Sept. 14th.
Case of PEERKHAN and others.

AMEER ALI,
against
PEERKHAN and Others.

Charge—MURDER and THEFT.

Prisoners convicted of theft, and of having made away with the woman to whom the property belonged, under circumstances exciting a strong suspicion that they had murdered her. Sentenced to a specific term of four years imprisonment, and further to be confined until certain tidings of the missing woman should be obtained.

The trial of the prisoner Peerkhan and his associates Ramdeen and Musst. Omda, came on at the 2d sessions of 1820 for Zillah Furruckabad. The indictment included two separate counts, namely,—

1st. Stealing a cart and bullocks, value 100 Rupees, the property of the prosecutor Ameer Ali. And,

2d. Violent suspicion of murdering Tejoo, the prosecutor's wife, and taking from her sundry jewels, and other property, value about 500 Rupees.

The prosecutor was a native of Futtehgurh; but, in following the occupation of a baker, attached to a corps of Native Infantry, had been absent from home for some years, and was residing at Benares at the time that the alleged acts, for which the prisoners stood arraigned, are supposed to have occurred. The circumstances which appeared in evidence in this case are as follow. Towards the close of the month of August 1819, the prisoners, Peerkhan and his reputed wife Omda, hired a cart and two bullocks from the prosecutor, for the purpose of proceeding to Furruckabad; and the prosecutor availed himself of this opportunity of sending his wife, Tejoo, to her parents at Futtehgurh. According to the depositions of two witnesses, named Ameerkhan and Azeemkhan, he gave her, with the property noticed above, in charge to his servant the prisoner Ramdeen. It is necessary to remark, that the party consisted of two men and three women, namely, the prisoners, the prosecutor's wife, and a third woman, besides two or three children. This remark is requisite, to shew how far the party travelled together, and where all traces of Tejoo were lost, circumstances essential to the refutation of the defence set up by the prisoners. About two months after the departure of his wife, the prosecutor happened to meet Omda in the city of Benares; and having previously heard that Tejoo had not reached Futtehgurh, he questioned her on the subject, when she told him that the bullocks were unable to proceed beyond Allahabad, and that in consequence his wife had been left at that place. On receiving this intelligence, the prosecutor immediately quitted Benares for Futtehgurh; and on arriving at Jullalabad, about 12 coss distant from the latter place, he discovered his bullocks in the possession of a man named Purshadee, who informed him that he had purchased them, through the agency of Ramdeen, from Peerkhan and Omda. This discovery led to the apprehension of Peerkhan and Ramdeen at Furruckabad, and ultimately of Omda, two months afterwards, at Benares, and then to the finding of the cart in the house of one Nobut Ali, Omda's son-in-law. On the trial, the prisoners Peerkhan and Ramdeen acknowledged having accompanied Tejoo as far as Cawnpore, and this point was also established

by the evidence of the witness Boodhoo, at whose house they put up. They also admitted the sale of the bullocks to Purshadee; but alledged that they had previously been purchased by Peerkhan, together with the cart, for the sum of 60 rupees from Mussummaut Tejoo. This sale, according to their own account, took place in a most clandestine manner, and even divested of all other circumstances of suspicion, might be considered a very improbable event: but independently of the great distrust which the mere transaction, as it is stated by the prisoners, was calculated to excite, the Judge of Circuit considered it proved beyond a doubt, by the respectable and credible evidence of an uninterested witness, (Imam Ali,) that what they had asserted was false, and that Tejoo, instead of returning, as they alleged, to Cawnpore, was in company with them at Poora, which is by ascertained distance 25 miles further advanced on the road to Futtehgurh. It was not, however, to this village only that the party were traced. A reference to the Suraee register kept at Khodagunge, clearly showed, that on the 13th of September preceding, at that place, only 13 miles from Futtehgurh, the number of the travellers had not been diminished.

The prisoner Omda, from the first, persevered in maintaining that she did not proceed beyond Allahabad, whence she returned to Benares; but this defence, besides being extremely incredible, stood refuted by the testimony of Boodhoo Khan and Imam Ali, and by the register above alluded to. The law officer of the Court of Circuit declared the prisoners convicted on violent presumption of the offences with which they were charged, and liable to imprisonment, until certain tidings of the missing woman should be obtained. The Judge, in referring the case, accompanied it by the following observations.

"That the defendants fraudulently or furtively obtained possession of the cart and bullocks belonging to the prosecutor, seems proved beyond a doubt. That they have destroyed Tejoo his wife, and possessed themselves of the remaining part of the prosecutor's property, there are strong grounds for suspecting, though it is not impossible that they may have disposed of the woman in some other way. I can hardly anticipate, under any view of the case, the entire acquittal of the prisoners; but it would be difficult at the present moment, to suggest any specific punishment, the measure of which must so greatly depend on the judgment of the Nizamut Adawlut, in respect to the actual extent of the prisoners' guilt. Should the missing woman be still alive, the conditional penalty declared in the *futwa*, may eventually elicit a disclosure that may restore her to her husband."

The Nizamut Adawlut, (present W. Leycester and S. T. Goad,) on a review of the whole of the proceedings connected with the case, passed the following sentence. "The *futwa* of two of the law officers of the Nizamut convicts the prisoners of having fraudulently appropriated the bullocks and hackery of the prosecutor, and of having sold the bullocks to another, and of having caused the prosecutor's wife, Musstummaut Tejoo, together with her jewels, to be missing, under circumstances that lead to a strong suspicion that Peer Khan and Ram-

1820.
Case of PERRHAN and others.

deen murdered her, and that Mussummaut Omda was privy thereto, and declares them liable to long imprisonment by *Seasut*. The Court agree therein, and sentence the prisoners to four years imprisonment with hard labor, and to be further imprisoned until Tejoo the wife of Ameer Ali be forthcoming, or her death ascertained, in the course of nature, or by other means not connected with the act of the prisoners: when the case must be reported for further orders."

1820.
Sept. 22d.
GHOLAM MULLIK'S case.

GOVERNMENT, *against* GHOLAM MULLIK.

Charge—MURDER.

To slay fornicators detected in the act is allowable, according to the Moohummudan law, and a prisoner confessing he had killed his sister and her paramour under these circumstances, acquitted and released by the Nizamut Adawlut.

THIS trial came on at the first Sessions of 1820, for the Zillah of Jungle Mehauls.

It appeared from the confession of the prisoner, which was the only evidence against him, that he had been long acquainted with the connexion which existed between an individual, named Ramroop Bhugut, and his sister; that he had repeatedly attempted to dissuade her from continuing this intercourse, representing the shame and disgrace brought on his family by her conduct: that he had also frequently reproved Ramroop Bhugut, but without effect: that finding them one day, after his return from bathing, in the act of adultery, he was irritated, and first killed Ramroop Bhugut with a sword which he had with him, and afterwards his sister, whilst trying to effect her escape. The law officer of the Court of Circuit declared in his *futwa* that the prisoner was guilty of murder, he having slain his sister, while she was in the act of endeavouring to effect her escape; but that as it was a matter of notoriety, that to slay fornicators in the act of fornication is lawful, it was possible the prisoner might have thought he was doing a legal act, and that consequently he should only be subjected to *Deeut*, or the price of blood. The Judge of Circuit, on referring the case, stated, that he concurred in opinion with his law officer; but that as the persons killed were caught in the act of adultery and slain on the spot, he did not consider the prisoner deserving of a severe punishment. The law officers of the Nizamut Adawlut declared in their *futwa*, that the prisoner was entitled to his release, he having confessed, that he had slain the two deceased persons immediately on detecting them in the act of fornication, which statement involved no criminality; and the Court, (present S. T. Goad and C. Smith,) being of opinion that the confession, the only evidence against the prisoner, should be taken as it stood, directed his immediate release*.

* By a subsequent enactment, a plea similar to that used by the prisoner in this case would be of no avail for the purpose of justification. In Section 5, Regulation IV. 1822, there is the following provision. "It having been found

GOVERNMENT,
against
PIMMEE and two others.

Charge—SODOMY, and BEING ACCESSARY THERETO.

1820.
October 3d.
Case of PIMMEE and others.

Two individuals convicted of sodomy, sentenced to 30 stripes, *Tushheer*, and eight years imprisonment: an instigator of the offence sentenced to the same punishment; and the Court determined, that as *Tushheer* generally forms part of the punishment on conviction of this offence, the case should always be referred to the Nizamut Adawlut.

THE prisoners Pimmee and Khodabuksh were tried for sodomy, and Amanee for being privy, and consenting to the commission of this unnatural crime, at the 1st sessions of 1820, for Zillah Bareilly. The case was in substance as follows.

On the night of the 5th of July 1820, a burglary was committed in the house of the prisoner Amanee, and when the police officer enquired if he suspected any particular person, he answered, that his suspicion attached to Pimmee, who was at variance with him in consequence of his having refused any longer to send to the said prisoner his *chela* Khodabuksh. On the perusal of this report, the Magistrate caused the three prisoners to be apprehended, when they confessed the fact; and Khodabuksh and Amanee (an eunuch) said that it was their occupation.

The law officer of the Court of Circuit declared the prisoners convicted, and liable to *Acoobut*; but he considered Amanee deserving of less punishment than the other two, in which distinction the Judge of Circuit did not concur. In his letter of reference, he observed, that it might certainly be urged that Khodabuksh, who appeared about 17 or 18 years of age, was able to judge and act for himself; but that it should be recollected he was the *chela* of Amanee, who having brought him up, possessed a certain degree of authority over him, and at all events had taught him to consider the act as innocent. He added, however, that his object in referring the case to the superior Court, was principally to recommend that measures might be adopted for putting a stop to this unnatural crime, by declaring a specific punishment for the offence.

The sentence of the Nizamut Adawlut (present W. Leycester) was to the following effect.

The *futwa* of two of the law officers of the Nizamut Adawlut convicts Pimmee and Khodabuksh of having been guilty of sodomy, and declares them liable to discretionary punishment by *Acoobut*. The

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that in certain cases of murder, the justificatory plea that the person murdered was the mistress or relation of the prisoner, and detected in criminal intercourse with another man, or that the murdered man was found in criminal intercourse with the prisoner's mistress or relation, or generally speaking, detected in fornication, has been upheld by the law officers in bar of capital or discretionary punishment, and has been declared to subject such prisoner to *Deeut* only, it is hereby enacted, that the law officers of the Nizamut Adawlut shall be called on to declare in such cases what the *futwa* would have been, if such plea had not existed, and the Judge or Judges sitting on the trial shall pass sentence under the general Regulations, and on consideration of all the circumstances of the case, the same as if no such plea had existed."

1820.
Case of PIMMEE and others.

Court concur in the conviction, and sentence Pimmee to receive 30 stripes with a *corah*, and Khodabuksh to receive 30 stripes with a rattan, to suffer *Tushheer* on an ass, and to be imprisoned with hard labour for eight years. Amanee is also convicted by the same *futwa* of having instigated and aided in the commission of the above crime, and declared liable to discretionary punishment by *Acoobut*. The Court concurring therein, sentence him to receive 30 stripes with a *corah*, to suffer *Tushheer* on an ass, and to be imprisoned with hard labour for eight years. The Court remarked also, that public exposure by *Tushheer* having generally formed a part of the punishment for the above crime, a reference to the Nizamut Adawlut should always be made, as the Courts of Circuit are not competent in these cases to pass an order of *Tushheer*.

1820.
Oct. 7th.
Case of RAMNEWAUZ and others.

GOVERNMENT,
against
RAMNEWAUZ and others.

Charge—FORGERY.

The *futwa* of the law officers of the Nizamut Adawlut convicting the prisoners of a minor offence, distinct from that with which they were charged, the Court directed their release; they being still liable to be tried on the minor charge.

At the July sessions for the city of Dacca, the prisoners Ramnewauz *alias* Bhola Tewaree, Brijlal Tewaree, Ramkunhai Rai, Ramlochun Das, Ramnarain Bose, and Hurishchunder Goopt, were tried on the charges of fraudulently preparing, fraudulently causing the preparation of, and for witnessing, knowing it to have been fraudulently prepared, a deed of engagement, on some date between the 28th of Poos and 29th of Maug, 1222, B. S.

Two of the prisoners, Ramnewauz and Brijlal, held an hereditary Zumeendaree tenure of a 12 anna share of Purgunnah Ramnugur, of the remainder of which Ram Kunhai, the third prisoner, and the others were proprietors. The latter and his partners held in farm (in the name of Doolub Shah) the 12 anna share, for five years, up to the end of 1223 B. S. and it would seem had contemplated the purchase of it, which however they delayed to effect. On the 28th Poos, 1222, the two first named prisoners executed a deed of sale of this property to one Bungoochunder Buttorja, a witness in this case. To invalidate this deed, Ram Kunhai produced one dated 23d Poos, 1222. And it was for having fraudulently prepared and witnessed this document, that the present charges against the prisoners were brought. The Judge of Circuit, in referring the case for the final orders of the Nizamut Adawlut, observed, that he had no hesitation in giving it as his opinion, that the charges were fully brought home to and proved upon all the prisoners. He therefore did not concur in the *futwa* of his law officer, which acquitted Ram Kunhai, Ram Lochun, and Ram Narain, and convicted Ramnewauz and Brijlal of swindling, or procuring money under false pre-

1820.
Case of RAMNEWAUZ and others.

tences, and Hurishchunder of aiding them in the same. His opinion was founded upon the general respectability of the witnesses for the prosecution, whose credibility he saw no reason to suspect; upon the form and nature of the proceedings in the civil suits, and upon the contradiction and prevarication with which the statements of the sellers abounded. The evidence on the part of the prisoners he disbelieved, from the mode in which it was delivered, the improbabilities which it contained, and as coming from servants or persons dependants upon themselves. The *futwa* of three of the law officers of the Nizamut Adawlut acquitted all the prisoners of having executed a deed of engagement to sell the 2 anna share of Purgunna Ramnugur to Ram Kunhai Rai, and of having fraudulently antedated the same to the prejudice of Bungoo Chunder the previous purchaser of the estate; but convicted the two first named prisoners of fraud in having executed two sales of the same estate to several persons; and also convicted the last named prisoner of having been privy thereto, and declared them liable to discretionary punishment.

The Court, however, (present W. Leycester and S. T. Goad,) observing many grounds to discredit several allegations in the testimony on the part of the prosecution, did not find sufficient reason to differ from the *futwa* of their law officers; and further considering that the offence of which the prisoners were found guilty was not that for which they had been put on their trial, and that they were still liable to be tried on account thereof, directed that all the prisoners should be immediately discharged.

BYJWA,
against
KULWA.

1820.
Nov. 13th.
KULWA'S case.

Charge—MURDER BY POISON.

AT the 2d sessions of 1820, for Zillah Bandah, the prisoner Kulwa was charged with giving sweetmeats mixed with poison to the prosecutor and his brother Hinga, in consequence of which the latter died. The facts, as they appeared in evidence, were briefly as follow.

Prisoner being charged in two cases, the first with murder by poisou, and the second with poisoning unattended by fatal circumstances, the Judge of Circuit,

From the deposition of the prosecutor Byjwa it would appear, that himself and the deceased Hinga his brother set out from their homes in Zillah Allahabad, in the month of Cheyt, for the purpose of proceeding to Bandah; that on their arrival at a village named Chapa, they were joined by a stranger (the prisoner Kulwa) wearing a badge, and calling himself a *chupprassy* of the Cawnpore custom-house, who, on pretence of also going to Bandah, proposed accompanying them; that on their reaching the village of Tindwary, distant from Chapa three *kos*, the prisoner quitted them on the plea of purchasing sweetmeats, when the prosecutor and the deceased repaired to a liquor

1820.
KULWA'S case.

considering him guilty of the first offence, thought it unnecessary under Regulation XV. 1814, to proceed with the trial of the second; but sentence by Nizamut Adawlut postponed in the referred case, until the other should be tried.

shop, and purchased half a seer of liquor extracted from the flower of the Mowah tree, which they drank between them; that they were again joined by the prisoner, and proceeded on their journey. At about three beegahs from the liquor-shop, the prosecutor stated that the prisoner called out to him and the deceased to stop and take some sweetmeat called *Peeran* (a kind of consecrated food;) that they each received from the prisoner a small quantity, in weight about two pice, in eating which the prisoner forbade the spitting any part of it out, as their so doing would bring ill luck to them, when the prosecutor observed that the taste of the food was at first sweet, but afterwards very disagreeable; that after proceeding a short distance, a well being in sight, the prosecutor and the deceased expressed a wish to wash their mouths, which the prisoner objected to, observing that the village of Mungose was close at hand, and that they had better wait till they arrived there; that on their reaching a tope of Mowah trees, a short distance from the village, the prosecutor and his brother the deceased fell down senseless; and that while in that state, the prisoner made off with all their effects. The situation of the prosecutor and the deceased was witnessed by Jhunooa and Sheoka, *Gorait*s of Mouza Mungose, and by Myaram and Khanna, the Zemindars. The deceased, it appears, lived but a short time after he was discovered by the witnesses; and the prosecutor, who was conveyed to the house of the witness Jhunooa, did not perfectly recover his senses till the following day, when he was taken to be present at the burial of the deceased, on whom an inquest had been held by the Thanadar. The prisoner, after plundering the prosecutor and the deceased of their effects, while they were in a state of insensibility, returned, it would seem, to the village of Chapa, where he was discovered by the recognizing of the horse on which he rode, by the prosecutor, whom the Thanadar of Tindwary had deputed, accompanied by a burkundaz, for the purpose of making search for the prisoner. The immediate production of the effects of the prosecutor and the deceased by the prisoner, on his apprehension, was attested by Bhowany Singh and Rajib Ally, Burkundazes, and by Bhowany, *Gorait* of Mouza Chapa. A quantity of other property, evidently stolen, was found in the possession of the prisoner, which was then unclaimed. The prisoner, before the Magistrate, acknowledged having taken from the prosecutor and the deceased their effects while they were in a state of insensibility, but denied having been the cause of their being in that situation, and ascribed it to the liquor they had previously taken at the village of Tindwary. Before the Court of Circuit the prisoner pleaded not guilty, but acknowledged his statement before the Magistrate. In referring the trial for the orders of the Nizamut Adawlut, the Judge of Circuit accompanied it by the following remarks. "That the situation of the prosecutor and his brother, and the death of the latter, was occasioned by some deleterious drug administered to them by the prisoner can admit of no doubt. The *futwa* of the law officer, in which I concur, convicts the prisoner on strong presumptive proof of administering poison to the prosecutor Byjwa, and to the deceased Hinga, his brother, from which the

1820.
KULWA'S case.

latter met his death; and sentences the prisoner to discretionary punishment of imprisonment for life, or to suffer death. The prisoner is a total stranger to all the parties. He appears, from the proceedings in this trial, to be a man of infamous character, who has travelled about plundering by means of administering poisonous drugs to all whom he could allure into taking them. The horse on which he rode, and which led to his discovery and apprehension in the village of Chapa, is claimed by the witness Beeka, who deposes to the prisoner having hired the animal of him, and subsequently robbed him of his clothes and horse, by means of administering to him some powerful narcotic. This forms a separate case before the Magistrate's Court. In addition to the crime of which the prisoner is now convicted, he stands committed on another charge of the same nature, but unattended with fatal consequences. As the *futwa* of the law officer has in the trial now submitted rendered the prisoner liable to suffer death, I have not, under section 2, clause 3, Regulation XV. of 1814, thought it necessary to proceed to the trial of the additional charge, which could lead only to an inferior penalty."

The Court of Nizamut Adawlut, however, (present W. Leycester,) not concurring as to the propriety of the above mode of proceeding, issued the following order. The *futwa* of all the law officers of the Nizamut Adawlut convicts the prisoner of having administered poison to Hinga and his brother, in consequence of which Hinga died, and of having appropriated their effects while in a state of stupefaction from the poison, and declares him liable to *Seasut* extending to death. The Court, however, prior to passing sentence, deem it adviseable that the remaining charge of administering poison should be entered on, as (if proved) tending to establish the position laid down in the Judge of Circuit's letter, that the prisoner is in the habit of "travelling about plundering by means of administering poisonous drugs," and direct that the case in question be tried at the ensuing sessions.

DULJEET,
against
PURMSOOKH.

Charge—ROBBERY.

1820.
Dec. 21st.
PURMSOOKH'S case.

THIS trial came on at the 2d sessions of 1820, for Zillah Etawa. The prisoner Purmsookh was charged with having robbed by open violence the prosecutor Duljeet of the sum of 9 Rupees. The reason of this reference will best be shewn by quoting an extract from the letter of the Circuit Judge, which was to the following effect.

Highway robbery, attended with assault by a single un-

1820.

PURMSOOKH'S case. armed offender, does not come within the provisions of robbery by open violence, as defined in clause I. section 3, Regulation LIII. 1803.

"Being clearly of opinion that the guilt of the prisoner has been established by the evidence exhibited against him, I do not feel prepared to offer any objections to the convicting *futwa* of the law officer; but not being quite certain that the offence of highway robbery as it is defined in clause 1, section 3, Regulation LIII. of 1803, is sufficiently made out in the present instance, I have purposely suspended passing the prescribed sentence.

"In my humble opinion, it is to be regretted that the regulation was not made more full and explicit in respect to the circumstances requisite to constitute the offence contemplated by the legislature in passing that law. The enactment, in its present form, has given rise to much difference of sentiments on the subject; and in consequence of this conflict of opinion, the records of the courts, relating to trials of robbery by open violence, will, I apprehend, be found deficient in that essential characteristic of judicial proceeding, an uniformity of judgment. In regard to the trial now submitted, I must state it to be my opinion, that, as the prosecutor was put in great bodily fear, and was also violently assaulted by the prisoner, the prisoner committed the crime of robbery by open violence: but according to the strict letter, he must be considered innocent of this offence, as it is defined in clause 1, section 3, Regulation LIII. of 1803, because (being a single offender) he was not armed with an offensive weapon, and also because it has not appeared in evidence that he went forth with the criminal intent to perpetrate robbery; a degree of proof which, I am satisfied, is not to be obtained in nine cases out of ten."

On the above reference, the following order was issued by the Court of Nizamut Adawlut (present W. Leycester). The *futwa* of two of the law officers of the Nizamut Adawlut convicts the prisoner of highway robbery, attended with a certain degree of personal violence, and declares him liable to discretionary punishment by *Acoobut*. The Court concur in the conviction, and sentence the prisoner to receive 25 stripes with a *corah*, and to imprisonment with hard labour in banishment to another zillah for 7 years. With reference to the 3d and 4th Par. of Mr. Perry's letter, the Court do not perceive how the nature of the offence defined by clause 1, section 3, Regulation LIII. of 1803, can be mistaken, when considered attentively; and more particularly so, since the enactment of the 4th and 5th clauses of section 8, Regulation XVII. of 1817, which clearly provide for robberies not coming under the above definition.

GOVERNMENT,
against
MUSST. RUMKOO.

1821.
Jan. 25th.
RUMKOO'S case.

Charge—MURDER.

Prisoner convicted of throwing herself and her two infant children into a well in a fit of anger, by which the younger was killed; sentenced to imprisonment for life.

THE prisoner, Musst. Rumkoo, was committed by the Magistrate of Alligurh, and brought to trial at the 2d sessions of 1820, on the charge of throwing herself into a well with her two daughters, one of whom, an infant 8 months old, was thereby killed.

The immediate and direct cause of the attempt on the part of the prisoner to destroy herself and her two children was not clearly made out by the evidence recorded on the trial; but it may be inferred that she was at the time under the influence of sudden anger, excited by a previous altercation with her husband. But, whatever may have been the feeling that incited her to the commission of the act, the tenor of the evidence left no doubt of her real intent, and the partial accomplishment of her object subjected her to the charge of having been wilfully instrumental to the destruction of her own offspring.

The *futwa* of the law officer of the Court of Circuit declared the prisoner to be convicted of murder; but, in advertence to the relation in which she stood towards the deceased infant, declared *Kissas* barred, and the price of blood to be the penalty to which she was liable. In submitting the case, the Judge of Circuit observed, that after a due consideration of all the circumstances, he gladly availed himself of this legal exception in the prisoner's favour, and expressed a hope, that, in the event of her ultimate conviction, she might not be visited with the utmost severity of the law, but, after a moderate punishment, be allowed to return to the care and support of her indigent family, who stood more in need of her domestic services and maternal protection, than public justice did, in the present instance, of a rigid example.

The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner Musst. Rumkoo of the wilful murder of her infant daughter, 8 months old, by throwing herself with two of her children into a well, which caused the death of her youngest child; and stating capital punishment to be barred, in consequence of the consanguinity of the deceased, declared her liable to *Deeut*. The Court (present W. Leycester and S. T. Goad) concurred in the conviction, and observing that the prisoner was liable to capital punishment under Section 15, Regulation VIII. of 1803, under all the circumstances appearing in the case, sentenced the prisoner to perpetual imprisonment in the jail at Allighur.

1821.
Jan. 29th.
Case of RUNJOOA and others.

MUNGOOA,
against
RUNJOOA and six others.

Charge—MURDER and WOUNDING, &c.

The prisoners convicted of murdering a woman, on suspicion of her being a witch; sentenced, the first two to perpetual imprisonment, and the other three to 14 years imprisonment: another prisoner convicted of having tried the woman, and pronounced her to be a witch, sentenced to seven years imprisonment.

THE prisoners Runjooa, Deonath, Kyloo, Lukna, Potum, Dookha, and Tooréa, were charged with the murder of Mussummaut Bhoondlee, wife of the prosecutor, and severely beating him and his daughter, Mussummaut Soomeree, on an accusation of witchcraft, and of afterwards plundering the prosecutor's house; and the prisoner Toorea with having tried, and declared the prosecutor's wife and daughter to be witches. The trial came on at the 2d sessions of 1820, for Zillah Ramgurh. It appeared in evidence that some of the inhabitants of the village of Seeroo, in Chota Nagpore, amongst whom were the five first named prisoners, suspected that some of the prosecutor's family had been guilty of witchcraft, and thereby caused the death of a number of persons in the village, (but who probably died of Cholera;) and in consequence sent to the prisoner Tooreea, who they considered was able to discover them, to request he would endeavour to do so. On receiving this message, Tooreea put some oil into a leaf with a little rice, and called over the names of the suspected persons, and when the names of the prosecutor's wife and daughter were mentioned, the oil (as he declared) ran through the leaf, and he accordingly asserted that they were witches. The prosecutor had information of this only on the evening of the 27th Bhadoon, and on the morning of the 28th of that month, or 1st September, the prisoners Kyloo, Luckna, and Potum came to his house, and desired him to attend with his family at an *Akhara* near a *Pokur* tree. He went there, with his wife, who was seven months gone with child, and his daughter, who had a young child at her breast. They there met some other persons, and the prisoners Runjoo a and Deonath, with the three prisoners above mentioned, seized and bound the prosecutor's wife and daughter, and beat them with heated sticks, of the tamarind tree, so severely as to occasion the death of the prosecutor's wife on the spot, and his daughter was so much injured as not to recover her senses for some time. The prosecutor himself was also severely beaten, and his arm broken: the child at the daughter's breast was not hurt, having been probably removed when the mother was bound. Other horrid acts of cruelty were stated to have been committed on the body of the deceased, although the prosecutor did not mention them before the Court of Circuit. After this the prisoners went to the house of the prosecutor, which having plundered, they drank a quantity of spirits which they found there. On information being sent to the Thana, the prisoners were apprehended, and an inquest held on the body, from which, as well as from the depositions of several witnesses, and the admissions of the prisoners themselves at the Thana, there could be no doubt of the correctness of the facts above stated. The prisoner Dookha, who was the husband of Musst. Soomeree, and son-in-law to the prosecutor, was from home at the time, and did not appear to have been in any way concerned in the transaction; and indeed the

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prosecutor only charged him with having known of the accusation against his family, and concealed it, of which however there was no proof. The law officer of the Court of Circuit convicted the prisoner Kyloo of the murder of Musst. Bhoondlee, with the assistance of others, and of beating Musst. Soomeree: Luckna of being concerned with others in the murder of Musst. Bhoondlee, and having plundered property in his possession belonging to the prosecutor: Potum of beating Musst. Soomeree and the prosecutor: Deonath of sending persons to turn out of the village the prosecutor's wife and daughter, as being witches, and which was the cause of the former being murdered and the latter beaten, and having in his possession a part of the property plundered from the prosecutor's house; and Toorea of being concerned in finding the deceased and her daughter witches: and declared Kyloo and Luckna liable to *Deeut* and *Tazeer*, the rest to *Tazeer*. The Judge of Circuit observed, however, that he could not see any difference in the guilt of the prisoners, as he considered them all to have been concerned in, and aiding and assisting in the murder of the prosecutor's wife, and beating him and his daughter, and plundering his house. Their plea of being drunk at the time the act was committed, which was probably the case, could hardly, he thought, be considered as any excuse, although the extreme superstition of the people of Chota Nagpore, with respect to witchcraft, might in some degree extenuate their conduct; but, on the other hand, he added, it was to be remarked that they did not even go through the usual form of a *Punchayut*, and that he therefore considered them (Runjooa, Deonath, Kyloo, Luckna, and Potum) deserving of the severest punishment short of death. He agreed in the conviction of Tooreea of having, after performing certain incantations, asserted the deceased and her daughter to be witches, for which he was declared liable to *Tazeer*; but as from his own confession (the only evidence against him) he appeared to have advised that they should not be beaten, and that he was not otherwise concerned in the crime, he did not consider that prisoner to have been guilty of a very serious offence. Concurring in the acquittal of Dookha, he issued a warrant for his release. The *futwa* of two of the law officers of the Nizamut Adawlut convicted Kyloo and Luckna of having been accomplices in the wilful murder of Musst. Bhoondlee, the wife of Mungooa, and wounding him and his daughter, on an accusation of witchcraft, and declared them liable to discretionary punishment by *Acoobut*, extending by *Seasut* to death. The Court, (present W. Leycester and S. T. Goad,) concurring in the conviction, sentenced them to perpetual imprisonment in the Allipore jail. Runjooa was also convicted of having been concerned in the above crime, and Deonath of having ordered the family of the prisoner to be turned out of the village as witches, and declared liable to discretionary punishment. The Court, deeming them both implicated as having been concerned in the said crime, sentenced them to 14 years imprisonment in the Allipore jail. Potum was also convicted of having severely beaten the prosecutor and his daughter, to the imminent danger of their lives; and the Court also considering him to have aided in the murder, sentenced him to 14 years imprisonment in the

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Allipore jail. Tooreea was declared by the *futwa* not convicted of any crime; but the Court, adverting to section 6, Regulation IV. of 1797, deeming him guilty of trying the deceased on a charge of witchcraft, and as such, under the foregoing section, an accomplice in the murder, sentenced him to 7 years imprisonment. The Court observed that Dookha had been released by the Circuit Judge.

1821. Feb. 23d. DEOKEEA and others.

GOVERNMENT,
against
DEOKEEA and others.
Charge—MURDER and PLUNDERING.

Case of the massacre of a whole family from motives of revenge: of twenty-three prisoners, tried for the crime, four sentenced capitally, fourteen to imprisonment for life in the Allipore jail, four to fourteen years imprisonment in banishment, and one acquitted.

THE prisoners Deokeea (1) son of Guness, Chynuk (2) son of Bhugwunt, Ghunneah (3) son of Pultoo, Puharrooah (4) son of Hurdoss, Bolah (5) son of Puharah, Daby (6) son of Alum, Purmah (7) son of Kishree, Hutty (8) son of Gopal, Synaput (9) son of Chunderbhan, Bhojee (10) son of Nuttoo, Muddun (11) son of Mukhun, Surawun (12) son of Ummersha, Tanee (13) son of Buddul, Burwah (14) son of Shobha, Kurhorah (15) son of Mandhatta; and in a supplementary calendar Sheolal (16) son of Burjore, Chinta (17) son of Bhao Singh, Bukhut (18) son of Synaput, Kullah (19) son of Guness, Ramjoo (20) son of Puharah, and Surawun (21) son of Krepah, Ramlolah (22) son of Omaid, and Ruttole (23) son of Heerah, were tried at the 2d sessions of 1820, for the Northern Division of Bundelkhund, on the charge of being accomplices in a murder wherein Sheoram Tewary, the purchaser of the village of Burrowlee, and his sons Diaram, Nunneh, and Heerah, and his grandsons Dabee Pershaud and Ajoodeah Pershaud were killed, and the houses of the family were plundered.

The following is a summary of the case, as far as it could be drawn from the collective depositions of the witnesses. In 1219, Fussly, the deceased Sheoram Tewary purchased at public sale the village of Burrowlee, sold for balances of revenue due from the proprietors, Synaput (No. 9), Kishen brother of Bhojee (No. 10), Ummersha father of Surawun (No. 12), and a Brahmin. The deceased retained himself the management of the estate during the first year 1220, Fussly. In 1221, Fussly, he gave it in farm for a period of one year to Synaput (No. 9), and Birjoo and Premsook, inhabitants of the village. In 1222, Fussly, it again reverted to his own management. In 1223, Fussly, he gave it in farm for a period of five years to Ummersha, Premsook, Bajoo, Mootee, Dullsing, Ram Lullah, Synaput (No. 9), Birjoo Hursing Dheo, Daby (No. 6), Ramjoo (No. 20), Subha, Bhojee (No. 10), and Khunby, at an annual *jumma* of rupees 4600, viz. rupees 4300, the *jumma* of Government, and rupees 300 the profit of the deceased, the village expenses to be defrayed by the farmers.

The farmers punctually paid to the *Tuhseeldar* of pergunnah Rant the *jumma* of Government, but of the profits stipulated to be receiv-

ed by the deceased, they only paid, as appeared from the evidence of Khooman Putwary, rupees 675; leaving a balance of rupees 825 due to him. It was asserted by the same witness, that, in 1223, Fussly, the deceased Sheoram Tewary took into his own immediate cultivation one hundred *beegahs*, on which account the farmers demanded a remission from their engagements of rupees 200 *per annum*, which the deceased refused to accede to; but it was ultimately settled that the disputes on this account should be arbitrated by Bukht, *Putwary* of Mouza Sirsah, formerly of Burrowlee, and by Khooman, *Putwary* of Burrowlee. The day on which these persons met for the adjustment of accounts, was that of the murder of the deceased Sheoram Tewary and his family.

It was stated by the witnesses Ghooman Ghorait and Gunsaum, that the cause of discontent, and of the rising of the inhabitants of the village, was the sale and cutting down by the deceased of some muhwa trees in a tope, near the village. Ghooman also mentioned the adjustment of accounts. In the depositions of Musst. Birjee, the widow of the deceased Sheoram Tewary, Dhull Singh, Bukht Putwary, and Khooman Putwary, the adjustment of accounts was stated to have been the ostensible cause.

The leading people in this outrage appeared to have been Synaput (No. 9), Bhojee (No. 10), and Mandattah not apprehended at the time of the trial. The witnesses Musst. Birjee, Dhull Singh, Bukht *Putwary*, and Khooman *Putwary* corroborated each other's testimony without the slightest contradiction, in asserting that Synaput and Bhojee came to the house of the deceased Sheoram Tewary on the morning of the murders, and peremptorily demanded an immediate adjustment of accounts; that the deceased Sheoram Tewary agreed to the same, and assured them, that he would abide by the arbitration of the two *Putwaries* Bukht and Khooman, appointed for that purpose. Ghooman Gorait, Musst. Birjee, Dhull Singh, Khumia, Ghunsaum, and Bukht *Putwary*, all deposed likewise to Mandattah's coming to the house of the said deceased, and on pretence of taking him to the Thana, there to settle their disputes, leading him to the spot where the inhabitants of the village had previously assembled, armed with a variety of weapons, and shoving him forward among the mob, using at the same time some reproachful terms, when the whole mob immediately fell upon the deceased, and murdered him and his two sons Diaram and Nunneh, who had accompanied their father. According to the depositions of Birjee, Sheololl, and Musst. Gheery, the mob proceeded immediately afterwards to the houses of the family of the deceased, when after murdering in the most cruel and barbarous manner Heerah Lall, another son of the deceased Sheoram Tewary, and two of his grandsons, Dabee Pershaud and Ajoodeah Pershaud, and plundering the premises of every thing, they quitted the village.

The *futwa* of the law officer, in which the Judge of Circuit concurred, convicted on strong presumptive proof, with the exception of the prisoners Hutty (No. 8), and Burwah (No. 14), the whole of the prisoners before the Court, as accomplices in the murder of Sheoram, his sons Diaram, Nunneh, and Heerah Loll, and his grandsons Dabee

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Pershaud and Ajoodeah Pershaud, and of plundering the premises; and declared them liable to discretionary punishment extending to imprisonment for life, or even to death.

The prisoners Hutty (No. 8) and Burwah (No. 14) were brought in by the *futwa* of the law officer as guilty on strong suspicion, though not so powerful as that which attached to the other prisoners: against Hutty only one witness deposed before the Court of Circuit, viz. Musst. Birjee, the widow of the deceased Sheoram Tewary, who swore indiscriminately to the whole of the prisoners. Before the Magistrate Hutty was also identified by the witness Sheololl, who before the Court of Circuit, however, denied having seen him on the day the murders were committed. With respect to the prisoner Burwah, the circumstance of two witnesses deposing to his having been a constant resident in the village of Sheerghur or Toorha, which villages are stated to be contiguous to each other, and distant twelve coss from Burrowlee, for a period of one year previous to the murder of Sheoram Tewary and family, in the opinion of the law officer of the Court of Circuit, tended in some degree to weaken the evidence against him, of Musst. Birjee, Musst. Gheery, and Sheololl. It should however be observed, that one of the persons (Nooneh) who gave evidence in favour of the prisoner, was his brother-in-law, and the evidence of the two witnesses were in many instances at variance.

The Judge of Circuit referred the trial for the orders of the Nizamut Adawlut, with the following observations.

"A more atrocious and bloodthirsty series of murders is not perhaps on record. From the depositions of the witnesses, it is not easy to attach to any one particular motive, acts so desperate and repulsive to the feelings of humanity. The purchase of the estate of Burrowlee at public sale by Sheoram Tewary deceased, is not of a date sufficiently recent to afford alone a conclusive reason; but I think it may be gathered, that this circumstance precluded cordiality between the former proprietors and the purchaser, the deceased Sheoram Tewary and family, and led to constant bickerings, which may have been confirmed into insatiate desire of vengeance by acts on the part of the deceased Sheoram Tewary, inimical to the former proprietors, and inhabitants of the village.

"In a case of this nature, where so much terror and confusion must have existed, it is not, I conceive, to be expected that the witnesses of the scene should be altogether connected in their evidence. The introduction of some events, and the omission of others in their different depositions, might be very reconcileable with truth; but it is to be regretted, that in the trial now submitted, some of the witnesses (those chiefly interested in the cause) should have allowed themselves to supply from the predominant feeling of the moment, a detail of particulars which it is impossible should have been gathered from events occurring in an instant of time.

"The case received from me a most full and patient investigation, and I cannot doubt that the whole of the prisoners before the Court were accomplices in the murders, and in the plundering of the habitations; but, from the nature of the case, the actual and immediate

perpetrators of the murders, who might be selected as examples to suffer the utmost rigour of the law, it is to be lamented are not to be distinguished; for although the witnesses Ghooman Gorait, Musst. Birjee, (the widow of Sheoram Tewary deceased, and mother of Diaram,) Heerah Loll, and Nunnah deceased, Musst. (Gheery, the daughter-in-law of Sheoram Tewary deceased, and mother of Ajoodeah Pershaud deceased,) and Sheololl, would endeavour to indentify them, yet the contradiction of their statements, and its being next to incredible that so many should have been thus minutely identified, preclude the possibility of satisfactorily attaching the deed to any specific number of the prisoners." The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners Deokeea (No. 1), Chynuk (No. 2), Ghunneah (No. 3), Puharrooah (No. 4), Daby (No. 6), Synaput (No. 9), Bhojee (No. 10), Muddun (No. 11), Tanee (No. 13), Kurhora (No. 15), Sheolal (No. 16), Chinta (No. 17), Bukhut (No. 18), Kullah (No. 19), Ramjoo (No. 20), Surawun (No. 21), Ramlolah (No. 22), and Ruttole (No. 23), on full proof of having been accomplices in the perpetration of the murder of six persons, of Sheoram, and his three sons Diaram, Nunneh, and Heerah, and his two grandsons Dabee Pershaud and Ajoodeah Pershaud, and of having plundered the house of Sheoram, and declared them liable to severe punishment by *Acoobut*. Bolah (No. 5), Purmah (No. 7), Surawun (No. 12), Burwah (No. 14), and Hutty (No. 8), were also convicted by the same *futwa*, on strong circumstantial proof, of having been accomplices in the above crimes, and declared liable to discretionary punishment by *Acoobut*. On a second *futwa* being required by the Court, all the law officers of the Nizamut Adawlut declared the Prisoners 9, 10, 11, and 13 liable to capital punishment. The Judges of the Court delivered their opinions *seriatim* as follows. Chief Judge W. Leycester. I do not agree in the *futwa* convicting No. 8. There is only one witness against him, and that not the best; namely Musst. Birjee. Of those declared liable to capital punishment, I think 9 and 10 deserving of it; and for the rest who are declared liable to *Acoobut i Shudeed*, I can see no ground for a sentence short of imprisonment for life. The remaining prisoners are, I think, deserving of fourteen years imprisonment. Hutty (No. 8), should, I think, be acquitted. Under this view the opinion of a second Judge is necessary.

Fourth Judge, S. T. Goad. I concur with the *futwa* as to all the prisoners, except Hutty (No. 8), and am of opinion that the prisoners 9, 10, 11, and 13, who appear to me from the evidence to have been most actively concerned in these atrocious murders, should be sentenced to suffer death, and that the remainder of the prisoners, with exception to Hutty, (who is entitled to acquittal,) should be sentenced to imprisonment for life, except Burwah (No. 14), who should be sentenced to fourteen years imprisonment.

Second Judge, C. Smith. After maturely weighing the evidence, I think the prisoners should be sentenced as follows. Nos. 1, 2, 3, 4, 5, 6, and 7, to fifteen stripes and fourteen years in banishment; 12, 14, 22, and 23, to ditto; No. 8 acquitted and released; 9, 10, 11, 13, 17, and 19, death; and 15, 16, 18, 20, and 21, fifteen stripes, and

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imprisonment for life in the Allipore jail. I think Chinta (17) and Kulla (19) should be added to the list of those sentenced to capital punishment, as having been actively engaged in the attack on the deceased Tewary's house, and in the murders there committed. I think it legal to sentence them to suffer death, in spite of the second answer of the law officers; the first answer including them in the eighteen against whom that first answer declares it to be proved that they were of the gang who murdered the six persons, and plundered the house of Sheoram Tewary. Taking the case as one of murder, it is legal, under section 4, Regulation VIII. 1799, (see the words "in all cases," to the end of the section.) Taking the case as one of robbery attended with murder, it is legal under clause 1, section 4, Regulation LIII. 1803; but murder having been clearly more the object of the offenders than robbery, I would sentence these two under the Regulation of 1799, rather than under that of 1803, and on this account I think imprisonment in the Allipore jail is more appropriate than transportation*. Where stripes are inflicted, I have in no case gone beyond 25, which I conceive should in all cases be the *maximum*. Of the prisoners, I should have no objection to exempt Purma (No. 7), whose age is stated to be sixty, from stripes altogether.

Officiating Judge W. Dorin. I think 9, 10, 11, 13, should be sentenced to capital punishment, as principal actors in the crimes charged; 17 and 19 seem scarcely inferior in guilt to the first four; but as the law officers do not express capital punishment in their *futwa* with respect to those two, and the example of more than four may not be necessary, I would sentence these two to imprisonment for life. The rest I would thus sentence: 1, 4, 6, 14, 15, 16, 18, 20, 21, 22, and 23, also to imprisonment for life; and to fourteen years imprisonment in banishment 2, 3, 5, 7, 12. Hutty (No. 8) to be discharged.

The following sentence was ultimately issued in this case (present W. Leycester, S. T. Goad, and W. Dorin.)

The first *futwa* of two of the law officers of the Nizamut Adawlut convicts the prisoners Synaput (9) son of Chunderbhan, Bhojee (10) son of Nuttoo, Muddun (11) son of Mukhun, and Tanee (13) son of Buddul, on full proof, of having been accomplices in the perpetration of the murder of Sheoram Tewary, his three sons Diaram, Nunneh, and Heera, and his two grandsons Dabee Pershaud and Ajoodeah Pershaud, and of having plundered the house of Sheoram; and declares them liable to severe punishment by *Acoobut*. On a second *futwa* being required by the Court, all the law officers declare the above prisoners Synaput, Bhojee, Muddun, and Tanee, liable to suffer death by *Seasut*. The Court fully concur in the conviction of the prisoners; and seeing no circumstances in their favour to render them proper objects of mercy, sentence the said prisoners Synaput, Bhojee, Muddun, and Tanee to suffer death, by being hanged by the neck until they are dead; and order that their bodies

* The fourth Judge had given his voice in favour of transportation in this case, but subsequently retracted this part of his opinion.

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be afterwards exposed upon gibbets, at, or as near to the spot where the murders were committed, as circumstances may admit.

The *futwa* of two of the law officers of the Nizamut Adawlut also convicts the prisoners Deokeea (1) son of Guness, Chinta (2) son of Bhugwunt, Ghunneeah (3) son of Pultoo, Puharrooah (4) son of Hurdoss, Daby (6) son of Alum, Kurhorah (15) son of Mandhatta, Sheolal (16) son of Burjore, Chinta or Chyna (17) son of Bhao Singh, Bukhut (18) son of Synaput, Kullah (19) son of Guness, Ramjoo (20) son of Puharah, Surawun (21) son of Krepah, Ramlolah (22) son of Omaid, and Ruttole (23) son of Heerah, on full proof, of having been accomplices in the perpetration of the above murders, and of having plundered the house of Sheoram, and declares them liable to severe punishment by *Acoobut*. The Court, concurring in such *futwa*, sentence the said prisoners to imprisonment for life in the jail at Allipore.

The prisoners Bolah (5) son of Puharah, Purmah (7) son of Kishree, Surawun (12) son of Ummursha, Burwah (14) son of Shobha, and Hutty (8) son of Gopal, are convicted by the same *futwa*, on strong circumstantial proof, of having been accomplices in the above crimes, and declared liable to discretionary punishment by *Acoobut*. The Court, concurring in the conviction of the prisoners Bolah, Purmah, Surawun, and Burwah, sentence them to be imprisoned in banishment for fourteen years from this date. The Court not being satisfied of the guilt of the prisoner Hutty, do not deem it proper to sentence him to any punishment, and direct that he be immediately discharged*.

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* It will be observed that Mr. Smith (the second Judge) concurred as to the propriety of this sentence in the case of five of the prisoners, namely the four sentenced capitally, and the one acquitted. It was proposed by the Chief Judge, that as Mr. Smith had taken a part in the trial, and agreed partially with his colleagues, his name should appear as one of the sitting Judges. To this, however, he objected, and consented to affix his signature only to a separate sentence, if drawn up, affecting the five prisoners above alluded to. The following minute was recorded on the occasion by the chief, fourth, and officiating Judges. "It is our opinion, that in a case like the present, on which Mr. Smith, our 2d Judge, did sit, and agreed with several of the other Judges in the sentence to be passed on several of the prisoners, his name should appear at the head of the proceedings as one of the Judges sitting on this trial, and that his signature should be affixed thereto, notwithstanding that he differed from the sentence on others of the prisoners; not, however, signing as his own act, but signing as the act of the Court. This is believed to be the practice of the English courts, where a Judge who did not sit on the trial often passes sentence.

"If Mr. Smith still adhere to his resolution not to join in the act of the Court, to which he also has been a party, we do not desire further to urge it on this occasion, as it is possible to make out a sentence without weighing the opinion given by Mr. Smith. But this may not be so in any future instance. We therefore remonstrate against this case (if it do go out without Mr. Smith's name) being drawn into a precedent, and declare our opinion, that a recurrence of the difficulty which has been felt on this occasion must produce a reference to superior authority.

1821.
Feb. 28th.
BYJNATH SINGH'S case.

GOVERNMENT,
against
BYJNATH SINGH.

Charge—PERJURY.

The prisoner was charged with perjury in giving in a false schedule of his property, for the purpose of being admitted to sue as a pauper. Held that the recital of his having made oath, in the *roobukaree* of commitment, is not sufficient evidence of the fact, and that the recorded evidence of witnesses in a civil court is not sufficient proof in a criminal trial as to the real value of his property.

THE prisoner was tried at the 2d sessions of 1820 for Zillah Behar. The charge set forth, that the prisoner, being desirous of instituting an original suit in the Zillah Court of Behar as a pauper, presented a petition under section 5, Regulation XXVIII. of 1814, and declared on oath that in the schedule annexed to it, was particularized the whole of his real and personal property. On investigation, however, it appeared that the prisoner had, in the year before, given 11 *beegahs* of land in farm for 115 rupees, which land was valued at 242 rupees, and that he possessed some clumps of bamboos and a slave, which were not mentioned in the schedule; and he was on this ground committed on a charge of perjury.

The law officer of the Court of Circuit convicted the prisoner of perjury, and declared him liable to punishment. The prisoner admitted, that he omitted to mention the 11 *beegahs* of land, which he had given in farm, and it also appeared that he had some clumps of bamboos and a slave; but he stated, that as he had not possession of the land, he did not consider it was necessary to insert it in the schedule of property annexed to his petition. This defence the Judge of Circuit thought extremely probable; and for this reason, as well as from all the circumstances of the case, he expressed his opinion, that the prisoner was not guilty of wilful misrepresentation or concealment in regard to his property, and therefore referred the case for the consideration of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut was to the following effect. "It appears from the evidence of the witnesses in this case, that, besides what was specified in the schedule, the prisoner had in his possession seven clumps of bamboos on a *ryotee* tenure, which were not sold, but which were used for the purpose of thatching houses. The oath of the prisoner had relation to his *property* in the strict sense of the word; but a *ryotee* tenure, in the general acceptation of the term, cannot be considered property, inasmuch as the ryot has not the power of transferring it. But an oath must be taken with reference to general acceptation. In point of fact, therefore, this is not a false oath; and even admitting that the tenure can strictly be called property, still as this is a case of *Yameen Ghamoos* (false oath or perjury) from which no injury or oppression has been sustained by another, no human retribution can be exacted. Under these circumstances the prisoner is entitled to his release"

On the merits of this case the officiating Judge, W. Dorin, expressed his opinion in these terms. As I am not satisfied that the defendant Byjnath Singh was guilty of fraudulent and deliberate falsehood in this instance, as charged against him, I agree with our *futwa* in acquitting him. But it is observable, that the petition containing the schedule of his property, in falsely swearing to the truth of

which schedule the perjury is alledged to have consisted, is not entered on the record of the trial. And it is further observable, that on turning to the *zillah* proceedings, (among which is the petition and schedule marked as given in on the 8th February 1820,) there appears no sufficient proof of the fact, that the defendant ever made oath to that schedule. It is no where stated on the back of the petition that he did so; and it is merely recited in the *roobukaree* which contains the order of commitment, and which bears date several months afterwards, that the defendant (then applying for leave to sue as a pauper) was, at the time, sworn according to custom. In my opinion, had there been sufficient reason to presume deliberate falsehood against the defendant, with regard to the schedule, it would not have been safe to convict him of perjury without further proof to the fact of his having been actually sworn to the truth of it. I do not think it would be sufficient to presume that he was sworn, because be ought to have been. The *futwa* of this Court clearly, I think, means an acquittal of perjury. But it is oddly worded. It seems to hint that there may have been some deviation from the limit of veracity, some degree of moral offence, not punishable by the courts of this world."

The Chief Judge (W. Leycester) expressing his entire concurrence in this view of the case, the following sentence was issued.

"The *futwa* of the law officers of the Nizamut Adawlut declares the prisoner Byjnath Singh Babhun not duly convicted of perjury. The Court, not being satisfied that he was guilty of a wilful and deliberate offence in the instance charged against him, hereby direct that he be discharged. The Court notice, for the future observance of the Circuit Judge, the following omissions on this trial. The petition containing the schedule of the prisoner's property, which is said to have been presented by the prisoner to the civil Court, and to the truth of which he is said to have sworn, is not entered on the record. The record contains no proof that he ever swore to the truth of the schedule.

"The Judge's proceedings, transferred to the *Foujdaree*, exhibit no further symptom of his having been sworn to the truth of the schedule, than a bare recital of the fact in the Judge's proceeding of the 2d September 1820, committing the prisoner for trial, (which is about seven months subsequent to the period when he is supposed to have made oath,) but without any specification of time or place, or before whom the oath was administered.

"The record of the trial contains no proof that the value of the land was 242 rupees, or more than double the amount of the sum for which it was pledged; and though three of the witnesses who deposed before the *Moonsiff* (and whose depositions are among the proceedings on the commitment) stated that the land was worth 22 rupees a *Beegah*, or 242 Rupees for the whole, still their evidence, so taken, could not be considered competent testimony on a criminal trial."

1821.
March 5th.
Case of Musst. MUNNA and others.

KHUTELA,
against
MUSST MUNNA and six others.
Charge—KIDNAPPING.

Prisoners charged with kidnapping a child, of whom no trace could since be discovered, declared liable by the law officers to imprisonment until they restored the missing girl; but sentenced by the Nizamut Adawlut to a definite period of imprisonment, there being no reason to suppose that the girl had been murdered.

THE prisoners Musst. Munna, Musst. Khooshaloo, Musst. Affia, Musst. Surroo, Musst. Ruhmoo, Musst. Amania, and Roshun Fukeer, were tried at the 1st sessions of 1821, for zillah Furruckabad, on the charge of stealing and selling Musst. Moollia, the daughter of Khutela. The chief evidence against them was furnished by their confessions, from which it appeared that on or about the 25th of August, 1820, while Musst. Moollia was playing, these women, or some two or more of them, stole the child; and carrying her to a spot outside the Mow Gate of the city of Furruckabad, disposed of her to Roshun Fukeer, and divided among themselves the price, which was by the majority of them stated to have been 15 rupees 8 annas. Roshun conveyed the child to some village in the Etawa district, and no trace of her could be discovered up to the date of the trial. The whole of the prisoners were convicted on their proved confessions, and declared by the law officer of the Court of Circuit liable to *Tazeer*, and to imprisonment till Musst. Moollia should be discovered. Musst. Munna and Roshun Fukeer, with a woman named Purmia, were also tried on another indictment for stealing and selling Musst. Moollia, the daughter of Musst. Dookhnee. In this case it appeared that Musst. Munna stole the child, and that she and Purmia took her to the house of Booallee Khan, and attempted to sell her; but not being successful, they transferred her to Roshun Fukeer their old accomplice, who conveyed her to Sukwye, and was on his road to some village in the Etawa district, when he was apprehended by the police officers, and the girl was recovered, and restored to her mother. The law officer of the Court of Circuit declared all three prisoners in this case convicted of stealing and attempting to sell the child, and declared them for that offence liable to *Tazeer*. From the examinations of these prisoners at the Thana, it seemed that they had for some time made a trade of stealing and selling female children; and as they were all (except Musst. Purmia) declared liable to imprisonment until the daughter of Khutela should be found, which might be tantamount to imprisonment for life, the Judge of Circuit considered it proper to refer the trials for the final orders of the Nizamut Adawlut.

The *futwa* of one of the law officers of the Nizamut Adawlut, in concurrence with the *futwa* of the Bareilly Court of Circuit, convicted all the prisoners of the offence with which they were charged, and declared them liable to *Acoobut*, by imprisonment, till the girl whom they stole, and sold, should be restored. The Court (present C. Smith and S. T. Goad) concurred with the *futwa*, as far as regarded the fact of stealing and selling the girl; but, there being no sufficient ground for supposing that the child had been

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Case of MUSST. MUNNA and others.

murdered, they deemed it more proper to sentence the prisoners to a definite, than an indefinite period of imprisonment, and accordingly sentenced the prisoners Musst. Munna, Musst. Khooshaloo, Musst. Affia, Musst. Surroo, Musst. Ruhmoo, Musst. Amania, and Roshun Fukeer, to seven years imprisonment in the jail of the zillah of Furruckabad, the six females without, and Roshun Fakeer with, labour and irons. In the other case, Musst. Munna and Roshun were sentenced to two years additional imprisonment, to be undergone on the expiration of the above sentence; and Musst. Purmia, for the single offence, was sentenced to three years imprisonment.

MUSST. RASOO, *against* MOHUN LOUNDA.

1821.

Mar. 15th.

MOHUN LOUNDA'S case.

Charge—MURDER.

Case of conviction under the Moohummudan law of homicide by misadventure, and prisoner declared liable to *Deeut*, but released by the Nizamut Adawlut; his confession that he killed the deceased at night, mistaking him for a dog or jackall, being corroborated by the only witness in the case.

THIS trial came on at the 2d sessions of 1820, for zillah Hooghly. The substance of the case was as follows.

The prisoner being charged with the murder of one Samphul Rai, stated before the Magistrate, that he was awakened in the dead of night by a sound as if some one was destroying the *tatee* that surrounded the enclosure to his house, and thinking that it might be a dog or jackall, he went out and gave the object a blow with a club. On finding that it was a man whom he had struck, and that the blow had proved fatal, he became alarmed, and removed the body to some distance from his own house.—Beyond the above confession there was only the evidence of one witness, who stated that he saw the prisoner give the deceased the blow which caused his death; though he did not, from fear, communicate his knowledge of the circumstance until two or three days after it had occurred, when the body had been found, and the Darogha came to his village to enquire into the circumstances of the homicide.

The law officer of the Court of Circuit convicted the prisoner, on his own confession, of homicide by misadventure, and declared him liable to *Deeut*. The Judge of Circuit expressed his opinion, that this *futwa* was perfectly conformable to the Moohummudan law, and therefore concurred in it; but submitted the trial for the purpose of obtaining the sanction of the superior Court to the prisoner's release, without further punishment, as he considered the confinement already undergone fully adequate to the offence. He added, it was supposed an enmity had existed on the part of the prisoner towards the deceased, under a suspicion that the deceased was too intimate with his wife, but that the contrary had been established. The prisoner's wife was formerly the concubine of the deceased; but two or three years had elapsed since the deceased parted with her, and the prisoner married her, during which period no altercation even

1821.
MOHUN LOUNDA'S case.

had arisen between them, on that or any other subject. The amount of the prisoner's offence, he observed, appeared to him to be confined to the removing and secreting of the body; but that some allowance should be made for his alarm, when he perceived that he had destroyed the life of a fellow creature. That it was not his intention so to do, would appear from the evidence of the only eye-witness, who had deposed, that when the deceased fell down senseless, the prisoner threw water upon him, evidently with the hope of recovering him; but it was useless, for the man was dead.

The *futwa* of the law officer of the Nizamut Adawlut, was similar in purport to that of the Court below; and the Court of Nizamut Adawlut, (present W. Leycester,) taking into consideration the period during which the prisoner had already suffered imprisonment, and deeming, with the Circuit Judge, that such confinement had been adequate punishment for his offence, directed that he should be immediately released.

1821.
March 31st.
LAL KHAN'S case.

GOVERNMENT, *against.* LAL KHAN.

Charge—MURDER.

Prisoner charged with the murder of his father. The Court of Nizamut Adawlut were satisfied of his insanity, but the *futwa* of their law officers declaring the evidence taken before the Court of Circuit insufficient to establish the act charged, the Court ordered further evidence to be taken as to this point,

AT the 1st sessions of 1821, for zillah Etawa, the prisoner was tried on the charge of having murdered his father Omeid. The facts of the case as they appeared in evidence before the Magistrate were, that on the 19th of December 1820, the prisoner Lal Khan, who for five or six years had been subject to occasional fits of insanity, was tied by his father to a *neem* tree, from which after a time he contrived to release himself, and went up to the roof of his house. His father in the mean time had fallen asleep on a *charpai* close to the house, and the prisoner threw on him a clod of earth from the roof, weighing four *seers*, which occasioned his death almost immediately. Only two witnesses were examined by the Judge of Circuit, the brother of the prisoner, and a woman named Kumlia, and their evidence was not taken in a satisfactory manner. This trial was referred, in conformity to the circular orders of the Court dated the 8th of May 1820, the law officer of the Court of Circuit having declared the prisoner insane, in which finding the Judge of Circuit expressed his entire concurrence. The *futwa* of the law officers of the Nizamut Adawlut declared the prisoner not convicted of the act charged; and the officiating Judge (W. Dorin) recorded his opinion to the following effect.

"I agree with the *futwa*, which acquits the defendant, for want of sufficient proof of having been the case of Omeid's death, by an act of violence. That the prisoner was insane before and since the occurrence, is sufficiently clear from the evidence; but it is worthy of observation, that from the way in which this case has been tried

1821.
LAL KHAN'S case.

by the Circuit Judge, there is not even sufficient to fix the act of violence on the defendant; which act, however, it is highly probable he did commit. If proper questions had been put to the witnesses on the trial, the act of violence might have been fixed on the prisoner, by strong presumption. The depositions of the witnesses, as given before the Magistrate, would have sufficied. Our *futwa* rightly says, that the confession of an insane man is not evidence at all.

not with a view to his conviction of any offence, but with reference to any order of detention it might be necessary to issue.

"My reason for laying stress on the fact not being properly fixed on the prisoner, is connected with the question of our power to detain him in confinement, and to pass what I think the proper order, namely, that he shall not be released till he is certified to be sane, and the Magistrate shall be satisfied that he is so; and not then, until his relations shall give good security to take charge of him, and prevent any further eventual mischief. My view is, that a man who during insanity kills another, is not to be set at large again to kill a third; and the tenor of the above order (which has been before used by the Court in similar cases) would probably have the desired effect. It may therefore be still expedient to have the witnesses re-examined, unless we can pass an order now to prevent his going at large, as being a dangerous madman, though he may have lucid intervals. My doubt is, whether such an order proceeds well from a criminal Court, if no act of violence have been fixed on the maniac. On the other hand again, there is the apparent absurdity of putting a maniac on re-trial, or indeed of trying him at all. Yet the last is unavoidable in such cases; for the fact of insanity is only established on the trial. On the whole, I think the best mode is to pass an order of detention now, on such terms as the case will warrant. It might be grounded on the Magistrate's proceedings."

The case having been next taken up by the Chief Judge, (W. Leycester,) the following orders were issued.

"The *futwa* of two of the law officers of the Nizamut Adawlut declares the prisoner Lal Khan not convicted by the evidence taken on the trial before the Circuit Judge, and the Court concur as to the insufficiency of the evidence to convict. The Court however observe, that circumstances appear on the Magistrate's proceedings which should have been put in proof on the trial. It is stated by the witness Mudaree, that the prisoner, immediately after throwing the clod of earth on his father, passed from the roof of his father's house to that of another person, jumped down, and fled to a village which is named. It appears also from his evidence, that a certain *Dhanook* went after Lal Khan to apprehend him. The other witness Kumlia equally speaks to Lal Khan's running away, though she says she knew it only from his having been seized at the village in question.

"The Court desire that Mudaree be examined as to the point noticed, and that the *Dhanook* be also called on to depose whether he saw Lal Khan running away; and if not, what prompted him to go in search of him, and as to the state in which Lal Khan was found. Kumlia will also be called on to state what reason she had to sup-

1821.
LAL KHAN'S case.

pose, from the mere fact of his having been found in another village, that he had fled to it after committing the act in question. Did she know that he was a short time before either in the house, or on the top of the house; and did she hear at any time from Mudaree, or any other, that Lal Khan had fled? The Judge of Circuit will also take evidence to the distance of the *Charpai* on which the deceased was sleeping from the wall of the house, as tending to shew whether the clod was designedly thrown or not, and whether the clod in question was on the roof of the house previously, or whence it was supposed to be obtained. The Judge of Circuit will also ascertain the name of the proprietor of the house, on which the prisoner is said to have passed, and whether any resident therein can give evidence as to the fact of his jumping down from their house, and running away. The Court of Circuit are desired to issue the necessary orders to the Magistrate, to have the witnesses above indicated in attendance at the ensuing sessions. The Court, however, being fully satisfied of the insane state of the prisoner's mind, do not consider his presence necessary during the further proceedings ordered; and direct that he be removed to the insane hospital at Bareilly, and detained there till further orders. The object of the Court is not to establish any crime against the prisoner, but they deem it necessary to ascertain whether the act of violence charged is attributable to him or not, previously to any final order being passed regarding him."

The further proceedings which were held in consequence of the above order, and submitted to the Nizamut Adawlut, did not, in the opinion of the law officers of that Court, furnish any reason to induce a change in their *futwa*; and the Court (present W. Leycester and W. Dorin) ordered that the prisoner Lal Khan should be detained in the insane hospital at Bareilly until he recover his reason, or some of his friends engage to take charge of him, and prevent his doing mischief.

1821.
Mar. 31st.
Case of CASHEE MANJEE and others.

GOCOOLCHUND SAH,
against
CASHEE MANJEE and others.

Charge—RIVER DACOITY.

It is not sufficient, under the Court's circular orders, that the confession of a prisoner should be verified before the

THE prisoners Cashee Manjee, Hurree Manjee, Perritram Manjee, Gudadhur Bystum, Muddoosoodun Lushkur, Cashee Lushkur, and Chedam Lushkur, were tried at the monthly sessions of January, 1821, for the suburbs of Calcutta, on the charge of having plundered the prosecutor's boat. The principal evidence against them was furnished by their own confessions; and the *futwa* of the law officer of the Court of Circuit convicted the whole of them, and declared them liable to punishment by *Acoobut*. The Judge of Circuit, in referring the case, stated his reasons for doubting the evidence adduced to the following effect. He placed no reliance on what the

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prosecutor and the witnesses Seedoo Bhooneea deposed to, the former of his recognition of the four first, and the latter of the three first named prisoners : had they really known them as the persons who were concerned, they would beyond a doubt have stated the circumstance, and they would have caused the two first named prisoners to be laid hold of at the time of their proceeding by their dwelling after the seizure of the prisoner Chedam, at which time it was alleged the said prisoners made their appearance, with a seeming intention of obstructing the apprehension of the prisoner Chedam. Secondly, from the description of the witnesses who deposed to the admissions made by the prisoners before the police officers, the Judge of Circuit was not, in the absence of any corroborating circumstances, disposed to give that credit to their testimony, as to the contents of the several examinations being the free and voluntary statements of the several individuals, as to warrant their conviction thereon of the crime with which they (the prisoners) were charged. It was true that they had respectively stated the same circumstances in their examinations in the Magistrate's court; but when it was taken into consideration, that the said examinations were taken by the Magistrate's native officers at a time when neither the Magistrate nor his assistant was present in Court, he thought it by no means improbable that the prisoners might have acted under the impression that it would be to their advantage to adhere to what had been written before the police officers. The fact of their examinations being taken in the absence of the Magistrate and his assistant, came out in the course of the evidence of the witnesses, who were severally examined in support of their statements ; and although it was stated by them, that the contents of their declarations were read over to the several individuals on the subsequent day, being that on which the Magistrate certified in the English language their having been voluntarily given before him ; yet there was no notice to this purport recorded in the Persian or Bengalee language, at the conclusion of the several declarations. The Judge of Circuit added, that he had refrained from calling the Magistrate's attention to this great irregularity in his proceedings, which was in direct opposition to the particular injunctions contained in the superior Court's circular letter of the 23d of August, 1810; being of opinion, that as the trial was laid before the Court, such remarks as the nature of the case might call for would come much more forcibly, and with a fairer expectation of being attended to, by originating from the superior authorities, than they might have met with, if proceeding from his Court.

Magistrate; but it is necessary that the confession should be originally taken and written down in the presence of such officer or his European assistant.

After maturely weighing the evidence recorded on this trial, the officiating Judge (W. Dorin) expressed his opinion of the merits of the case in the following terms. " I cannot put faith in any of these confessions ; nor can I believe that the prosecutor or the witness Seedoo recognized the three first named prisoners at the robbery. When the two first named were seen standing in the road, with others, by the prosecutor and the above witnesses, shortly after the affair, (a police peon being in company,) they were not indicated as having been recognized. That these three were seen sitting on the bank of the ri-

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ver, when the prosecutor's boat came to, is very probable; and the circumstances stated by the boatman Casi Mund, that Cashee and Hurree (to whom he communicated the fact of money being in the boat) invited him to their house, and took some pains to persuade him to go, (Hurree being his distant relative,) and that Cashee took him to his house, and then disappeared: these create considerable suspicion against Cashee especially; but I do not think they are alone sufficient to authorize conviction. Against Muddoosoodun, the fifth prisoner, it is urged, that besides making confession, (which I reject,) he pointed out a *Chadur* and *Dhotee* as taken in the dacoity, the first of which is sworn to by the prosecutor, and by the witness Seedoo (though it had no particular mark,) and the second sworn to by the witness Casi Mund, and by his fellow boatman. With the suspicion attaching to the confession, I do not attach much weight to these oaths to a *Chadur* and a *Dhotee*, neither of them very easily distinguishable, and both very easy of substitution by the ingenuity of a police officer. I have a strong impression that the confessions in this case have been very wickedly obtained, in the first instance, and that the circumstance of the Magistrate's having allowed his native officers to examine the prisoners, when brought to the Magistrate's Court, instead of doing it himself, has been very mischievous, independently of being quite irregular, and contrary to orders. His having a prisoner up the next day, and asking him whether such was his confession, seems to be of no earthly use, as far as control of undue proceeding is concerned. The evil is by that time all done. Confessions taken as these have been, appear to me entitled to just the same credit as *moofussil* confessions, which is little or none."

The third Judge (S.T. Goad) entirely concurring in this view of the case, the following sentence and orders were issued on the occasion.

"The prisoners Cashee Manjee, and Hurree Manjee, Perritram Manjee, Gudadhur Bystum, Muddoosoodun Lushkur, Cashee Lushkur, and Chedam Lushkur, have been convicted by the *futwa* of two of the law officers of the Nizamut Adawlut, of river Dacoity, and declared liable to discretionary punishment by *Acoobut*. The Court, however, not being satisfied with the evidence against the prisoners, do not judge it proper to sentence them to suffer any punishment, and direct that they be released.

"The Court, observing that the confessions of four of the prisoners were taken before the *umla* of the Magistrate of the suburbs of Calcutta, when neither he nor his assistant was present in Court, (and this being the second instance of the kind which has come to the knowledge of the Court within the last six months,) they direct that the irregularity of allowing confessions of prisoners to be so taken, be pointed out to the Magistrate, and that in future he be required to pay strict obedience to the Court's circular orders of the 12th December, 1809, and 23d August, 1810, as the Court cannot place any reliance on confessions taken as those in question appear to have been."

MOTEERAM,
against
GUNGARAM and IMRUT LAL.
Charge—EMBEZZLEMENT, &c.

1821.
April 14th.
Case of GUNGARAM and IMRUT LAL.

The name of an European being indirectly introduced in a transaction for which a native is committed for trial, does not vitiate the trial under the circular orders of the 4th of Jan. 1811.

THE prisoner Gungaram and Imrut Lal, were tried at the first sessions of 1821, for zillah Agra, the first for disposing of the property of his master without permission, and appropriating the proceeds of the sale, and the second for purchasing the said property at a price much below its value, knowing it to be embezzled.

The circumstances of this case, as they appeared in evidence, were as follow. On the 18th of Phagoon 1876, *Sumbut*, a boat laden with 25 *maunds* of copper, 54 *borahs* of *shukkur*, (about 195 *maunds*,) 44 *borahs* of *Huldee*, (about 154 *maunds*,) and 10 *maunds* 5 *seers* of cocoanuts, of the weight of Mirzapore, was dispatched by Moteeram, *Gomashta* of Gokooldoss Parrukjee, from Mirzapore to Muttra, under charge of the prisoner Gungaram, as *churundar* or supercargo. The value of the property when at Mirzapore was stated to be rupees 4,089. 0. 3. On the arrival of the boat at Etawa, Gungaram fell in with the boats of Lieutenant Savory, of the 8th Regiment Native Infantry, who was in route to join his Regiment at Agra. Lieutenant S. requested from him the loan of 200 rupees, which he consented to give; and on reaching Ooriah, Lieutenant S. sent his servant to the Bazar, and from thence brought several *Hulwyees* or confectioners, to whom Gungaram sold 8 *borahs* of *shukkur*, and gave 150 rupees to Lieutenant S. notwithstanding the alledged remonstrances of Ramdial *Manjee*, and Ghousee *Mullah*, who represented that the property belonged to Parukjee, and that Gungaram was not authorized to dispose of it. On reaching a place called Cutchowra, Lieutenant S. sent two sepoys and two chuprasees with Gungaram to a *Hulwyee* named Moolchund, and offered for sale some more *shukkur*. Moolchund accompanied them to the ghaut, and purchased, in presence of Lieut. S. 24 *maunds* of *shukkur*, for which he paid to Gungaram 240 rupees, which Lieut. S. sent by a sepoy to a money changer in the town for examination. At this place the boat was exchanged, and another procured, through the interference of Lieut. S. notwithstanding, as deposed by the *Manjee* and *Mullah*, that the boat dispatched from Mirzapore was in good order. Gungaram accompanied Lieut. S. to Agra, and on arriving there, removed the whole of the property from his boat to a storehouse at the Lieutenant's bungalow. A shopkeeper named Doorga deposed, that one day he carried for sale to the Lieutenant a *soorye*, which he did not purchase, but told him that he wished to dispose of certain property, and requested him to send a purchaser to his dwelling house, and that he (Doorga) accordingly took a servant of Lieut. Savory's with Gungaram to Imrut Lal, who engaged to purchase the property. Imrut Lal stated, that he purchased the whole of this property from Lieutenant S. for rupees 2,492. 1. and that he paid the amount to the Lieutenant's servants, or to Gungaram in

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their presence. Gungaram, in his examination before the Magistrate, stated, that he had sold the property to Imrut Lal, and had given the amount to Lieut. Savory, in return for which he had received a document in English, of the substance of which he pretended ignorance, but which appeared to be a promissory note of Lieut. Savory's for rupees 2,150, payable in five years, with interest at 12 *per cent.* Lieut. S. admitted that he received a loan of money from Gungaram at Ooriah; that he subsequently received other sums, and that he granted the promissory note; but produced two *Hoondees*, purporting to have been given to him by Gungaram, in part of the loan of rupees 2,150, which were returned from Calcutta, the persons on whom they were drawn not being found. Lieut. S. also admitted, that the property had been deposited in his out-offices, but asserted, that he believed it to be Gungaram's. Gungaram denied having drawn the two *hoondees*, and the fact was not proved by evidence. The Judge of Circuit referred the case for the consideration of the Nizamut Adawlut, without taking a *futwa* from his law officer, stating as his reason for so doing, that it appeared to him the commitment of Gungaram and Imrut Lal was in opposition to the circular orders of the Nizamut Adawlut, date the 4th of January, 1811. On receipt of the above reference, the following order was passed by the Court of Nizamut Adawlut.

Read the following letter from the 3d Judge of the Bareilly Court of Circuit, under date the 16th February last, transmitting the proceedings in an unfinished trial against Gungaram and another, for the embezzlement of the property of his master, under the impression that as the name of Lieut. Savory is introduced in the trial, the proceeding with it further, without a previous reference to the Nizamut Adawlut, will be in opposition to their circular orders of the 4th January 1811*.

The Court, however, observe, that no charge has been made against Lieut. Savory, and that the guilt of Gungaram in selling the property may perhaps be refuted by the further evidence which has been called for that purpose on the part of the prisoner; and even if the fault of Gungaram on that head were proved, that no imputation would lie against Lieut. Savory, unless it could also be shewn that he was aware of that fact at the time; regarding which there is only the stated remonstrance of the *Manjee* and a *Dandee* at Oorea, which was counteracted by the assurances of Gungaram. The Court therefore direct, that the proceedings be returned to the Court of Circuit, with instructions to complete the trial under the Regulations.

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* Instructing the several Magistrates to refrain from trying or committing for trial, before the Court of Circuit, natives charged or suspected of being concerned with British subjects in the commission of offences, until they have made a reference to the Court of Nizamut Adawlut, and have been furnished with instructions for their guidance in the case.

1821.
April 25th.

BOODHOOA,
against
HAZAREE and MUSSUMMAUT LUCHMEE.

Charge—MURDER.

Case of HAZAREE and MUSST. LUCHMEE.

A wife's concealment of the murder of her husband, by her paramour, without however her participation or assistance, punished with seven years imprisonment.

THE prisoners Hazaree and Musst. Luchmee, the former indicted for the felonious homicide of Nunhe, the son of the prosecutor Boodhooa, and the latter for being concerned, in an inferior degree, in the commission of the crime, were tried at the first sessions of 1820, for zillah Moradabad. The deceased was the husband of the prisoner Luchmee.

The murder was perpetrated about midnight, on the 9th of October 1820, at a spot stated to be about two miles distant from the village of Bunherakhera, in which the parties resided. The corpse of the deceased was found on the 12th of the same month, in a field of sugar-cane, and exhibited no less than fifteen wounds of a sword. This weapon was found carefully concealed in a part of Hazaree's house, and was admitted by him, in his examination before the police Darogha, to be that by which the murder was effected. The prisoner Hazaree was a Brahmin, Luchmee of the sweeper caste; but, notwithstanding the wide difference between the castes to which they respectively belonged, and the extreme caution generally observed by the natives of any description of this country, in avoiding all unnecessary communication with persons of the latter class, it is pretty certain that a criminal connexion had existed between the two prisoners, for a long period antecedent to the murder of Nunhe, and there could be no doubt that this illicit attachment was the sole cause of the commission of the crime for which they were indicted.

The circumstances relative to the conduct of the male prisoner previously to the discovery of the murder, and to the grounds of suspicion which suggested his apprehension, were fully detailed in the report of the police Darogha. What originally gave rise to the suspicion against the prisoner Hazaree was, the fact of his having given out that his house had been attacked by four thieves, who had wounded him; and, on search of his house, there being no marks of blood discoverable, or other trace of such an occurrence having taken place, coupled to the assertion of the female prisoner, that Hazaree had, on the night since which her husband was missing, called him out of the house to assist in carrying grass. The prisoner Hazaree, in his examination before the police officer, admitted having, conjointly with Luchmee, aided and abetted in the commission of the murder, and at the same time endeavoured to criminate one Hookumee, a brother of the deceased, as the chief and principal actor on the occasion. On his appearance before the Magistrate, he denied having made any such confession, and attempted to account for the finding of the bloody sword in his house, and for the two slight wounds that were visible on his body, by repeating his former story, that he had been attacked in his house by thieves, who, in the prosecution of their object, had wounded him with his own

1821.
Case of HAZAREE and MUSST. LUCHMEE.

weapon. The statements of Mussummaut Luchmee, in the first instance, at the Thana, and subsequently in the Magistrate's court, differed materially: at the former place she disavowed all information relative to the circumstances attending her husband's death; but on her appearance before the Magistrate, she accused the prisoner Hazaree of having perpetrated the murder.

The law officer of the Court of Circuit, in his *futwa*, declared the crime of wilful murder established against the prisoner Hazaree by presumptive proof, and at the same time pronounced the prisoner Luchmee convicted of being privy to that crime. The Judge of Circuit, in referring the case, observed, that as far as this finding applied to Hazaree, he had no reason to dissent from it, being satisfied of the guilt of that prisoner, and considering him deserving of the extreme punishment to which he had been declared liable. But in regard to Mussummaut Luchmee, he expressed his opinion that the Mooftee had viewed her conduct too leniently; and after duly weighing all the circumstances against her, he inclined to think that the part which she took on the occasion was of a more active nature than that ascribed to her in the *futwa*, and that her criminality was not limited to the mere concealment of what she knew relative to her husband's murder.

The *futwa* of the law officers of the Nizamut Adawlut declared the prisoner Hazaree convicted on strong presumption of the murder of Nunhe, and the prisoner Mussummaut Luchmee of concealment of the same: the former it declared liable to death by *Seasut*, and the latter to discretionary punishment by *Acoobut*. The second Judge of the Nizamut Adawlut (C. Smith) observing, that he agreed generally with the Judge of Circuit, was of opinion, that the prisoner Hazaree should suffer death. He remarked, that it was not easy to assign an exactly suitable measure of punishment to the wife of the deceased. He suggested the term of seven years imprisonment, but at the same time stated, that he had no objection to make that period longer, should another Judge deem the punishment inadequate. The case having next been taken up by the officiating Judge (W. Dorin), he observed, with reference to the evidence, that against Hazaree, there was the inconsistency of his statements; the failure of his defence; the fact of the sword, which he admits to be his, being found hid in his dwelling; bent and bloody; his having gone out with Luchmee and the deceased on the night on which the deceased was killed, under pretence of bringing grass home; his being met that night by the witness Jyesook, alone, and with a sword, which witness had seen a woman (Luchmee) standing in the mango garden, not far from where the body was found; the fact also of an intrigue of some standing with Luchmee, wife of the deceased. All these circumstances, he thought, formed against the male prisoner strong presumption, sufficient to convict.

The account of Luchmee before the Magistrate was, that she saw Hazaree kill her husband. But this, the officiating Judge observed, was not evidence against Hazaree. Against Luchmee he did not infer from the evidence that degree of assent which would constitute

assistance and participation as a principal, though there might be ground for suspecting it. He only inferred against her, that when Hazaree killed her husband, she knew it, and concealed the fact. Under the *futwa* given, he added, that he had no objection to the sentence of seven years against her, and he declared his opinion that Hazaree should be sentenced to capital punishment. Sentence passed accordingly.

1821.
Case of HAZAREE and MUSST. LUCHMEE.

GOVERNMENT, *against* BHAGYE.

1821.
April 30th.
BHAGYE'S case.

Charge—ROBBERY and WOUNDING.

Prisoner convicted of robbery and wounding, with the handle of an adze. It being inferred, from the circumstances and place of the occurrence that his intent was to kill, sentenced to 39 *corahs* with imprisonment in transportation for life, under clause 4, section 8, Regulation XVII. 1817.

THIS was a case of highway robbery, attended by severe wounding, in attempt to murder, and the trial came on at the 1st sessions of 1821, for zillah Sylhet.

Owing to a deficiency of eye-witnesses in the case, Government was made the prosecutor; but the real prosecutor was one Soobitram Mistree. The circumstances attending the transaction appeared to be as follow. Soobitram having a claim for five rupees against one Rumzan, the latter sent his son (the prisoner Bhagye) along with the prosecutor to Sonamgunge, to obtain and pay him the money. When they came to Sonamgunge, the prisoner made excuses for not paying the money, but proposed to Soobitram to accompany him to another village called Doolpe, where he would be able to settle the account. Soobitram agreed to do so. They set off, and the prisoner went before, carrying the handle of an *adze* belonging to Soobitram, under pretence of lightening the load which he had to carry. The prisoner led him off the road through some jungle, when suddenly turning round, he struck him with the handle of the adze on both his arms, with which he was supporting the load on his head. Soobitram fell, and the prisoner cruelly wounded him on the head, and in other places, and left him for dead; first robbing him of 20 rupees, which he had folded up in his clothes. When Soobitram came to himself, he crawled in his mutilated state to the nearest village, and went to the house of a witness named Rajkishen Nundy, where he was seen by one Mohunram Deb, who also deposed to the state he was in, and the story he told them, which depositions agreed with that of Soobitram before the Magistrate, and before the Court of Circuit. The depositions of Gungaram and Sheikh Oojaee, proved that the prisoner and Soobitram were seen together at Puddergunge and Sonamgunge, (which are the same village in fact, though on opposite sides of the river Soorma,) and that in the shop of Sheikh Oojaee, they changed a rupee into cowries, and departed together; that the next day the prisoner returned to Oojaee's shop alone, and having purchased some articles went away.—The prisoner, in his defence before the Magis-

1821.
BHAGVE'S case.

trate, acknowledged having gone with Soobitram as far as Sonamgunge, and that they set off together to proceed to Doolpe; but that, on the way, having gone aside on a necessary occasion, another person (as he supposed) wounded Soobitram. His defence before the Court of Circuit was altogether at variance with the above. In the former he declared that they went for the purpose of having the debt paid. In the latter he asserted the debt was paid before they left home. He did not call any witnesses to his defence, but two witnesses appeared to bear testimony to the prisoner's character, which seemed to have had nothing against it previously to the present affair.—The *futwa* of the law officer of the Court of Circuit convicted the prisoner of the offence charged, on violent presumption. The Judge of Circuit expressed his opinion, that the prisoner had incurred all the guilt of murder, although fortunately the offence was not quite consummated; and he saw no reason for proposing any mitigation of the punishment prescribed by the Regulations. He therefore passed the sentence of thirty-nine *corahs*, and imprisonment in transportation for life. On his referring the case for confirmation as usual to the Nizamut Adawlut, the *futwa* of the law officer of the Nizamut Adawlut declared the prisoner convicted of highway robbery, attended with severe wounding, and liable to discretionary punishment by *Acoobut*. The officiating Judge, (W. Dorin,) after duly weighing the evidence recorded in this case, stated it to be his opinion that the prisoner was convicted of having robbed and wounded Soobitram, in the jungle, while the two were proceeding together towards the village of Doolpe. He considered transportation for life, with stripes, a very proper punishment for him; and observed, that to bring him within the law prescribing this punishment, he must either be held to have done the act, being *armed*, which would induce the penalty of Regulation LIII. 1803, for robbery by open violence; or, if, from the instrument he used, (the handle of a *tesha*, or adze, without the iron head,) he be not considered as within the description of being armed, he must be held to have inflicted the personal violence with intent to kill, or in such manner as to endanger life; either of which would bring him under Regulation XVII. 1817, section 8, clause 4. Whether the wounds, he added, were such as to endanger life, could not be very accurately determined from the imperfect description given of them; but it might be properly inferred from the circumstances, and place of the occurrence, that the prisoner's intent was to make away with Soobitram. He accordingly gave his opinion, that the prisoner should be transported for life. But the case appearing to be one in which it was advisable that the sentence should issue from two Judges, the proceedings were made over to the chief Judge (W. Leycester), who entirely concurring in the opinion above expressed, the sentence passed upon the prisoner by the Judge of Circuit was finally confirmed.

GOVERNMENT,
against
PHOOLCHUND.
Charge—MURDER.

1821.
May 8th.
PHOOLCHUND'S case.

Prisoner confessing that he killed his wife, not in the act of adultery, but on receiving abusive language, when begging her to desist from her criminal intercourse with another man; capital punishment remitted, in consideration of the provocation. Sentence, imprisonment for life.

THE prisoner Phoolchund was charged with the murder of Mussummaut Phugnee, his own wife, and tried for this offence at the second sessions of 1820, for zillah Rajshahye. From the evidence in this case, it appeared the prisoner had ascertained that an improper connection subsisted between his wife and a relation of his own, named Gobinda, on which account he left his former residence, and settled in the village where his father-in-law resided, to which Gobinda also removed, between the deceased and whom the intercourse appears to have continued. The prisoner spoke to his father-in-law, and also mentioned the subject to some of his neighbours; and two or three evenings before he committed the fatal act, he seems to have caught the parties together at the house of a third person, to which the deceased had gone under the pretence of thrashing grain. The prisoner assigned the above as the cause to the acting joint Magistrate of Bagoorah, (in whose jurisdiction the crime was committed;) and further stated, that he begged the deceased to break off the connection, and that he would pardon and forget all that had passed, in reply to which he received the grossest abuse; on which he took a *Hunsooa*, or bill-hook, and murdered the deceased. Before the Court of Circuit he denied, and stated, that on his return from his daily labour, he found his children crying, and on entering the house saw his wife murdered, on which he became insensible, and did not recover for some time after his arrival at the Magistrate's station. The *futwa* of the law officer of the Court of Circuit declared the murder proved, but *Kissas* barred on account of the children. In the *futwa* of *Deeut*, to which the prisoner was declared liable, the Judge of Circuit observed, that he did not concur; but in submitting the case for the final sentence of the Nizamut Adawlut, he remarked, that though the prisoner perpetrated the crime in the absence of any immediate act of criminality which under the law is admitted to be an extenuation of the offence, yet if any circumstances could palliate the excitement of his passion to the height which caused the commission of the heinous crime of which he stood convicted, perhaps some allowance might be made for the conduct of the prisoner, whose feelings, previously irritated by reflection on the injury he had sustained, might be easily supposed to have been sensibly alive to the manner in which his advances for a reconciliation and forgiveness were received. The *futwa* of the law officers of the Nizamut Adawlut declared the prisoner convicted of wilful murder; but the Chief Judge (W. Leycester) was of opinion, that a merciful administration of justice would not allow of his being convicted of any thing beyond culpable homicide, for which a sentence of five years imprisonment would be an adequate punishment. On the merits of this case, the officiating Judge (W. Dorin) recorded his opinion in the following terms.

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PHOOLCHUND'S case.

"The evidence in the case shows sufficiently, that the prisoner put his wife to death with a sort of bill-hook *(hunswa)* under a sense of indignity at an intrigue she had carried on with another man; with which he had before upbraided her, and in which she still persisted; and there appears to have been additional irritation, from abuse given him by his wife, in reply to his remonstrance, on the night on which he committed the act. I think there is no good ground for remitting more than the capital part of the sentence, and that he should be confined for life. I think this is conceding enough to the feeling under which it may be supposed he acted, and that it would be dangerous to the lives of other women to allow that such an act should only be visited with slight punishment.

"I view it as a case of malicious homicide, not exempt from some degree of premeditation."

Owing to the above difference of opinion, the trial was next submitted to the second Judge, (C. Smith,) who observed, that it was clear the prisoner had deliberately murdered his wife, on suspicion of being connected with his cousin Gobinda; that it was equally clear there was nothing in the circumstances of the case which by the Moohummudan law barred a capital sentence, and that he was of opinion, therefore, the sentence should be capital. The third Judge also (S. T. Goad) observing, that this was a very deliberate murder; and that the Moohummudan law, which allowed many excuses for the murder of wives by their husbands, found none for the prisoner Phoolchund, was of opinion, with the second Judge, that the prisoner should be sentenced to suffer death; but in consideration of the chief and officiating Judges having given their opinions for imprisonment instead of death, the second and third Judges afterwards joined the officiating Judge in a sentence of perpetual imprisonment.

1821.

May 22d. Case of JUMAI and others.

MUSST. HUREEA, *against* JUMAI and others.

Charge—DACOITY.

The offence of Dacoity taking place within the British territory, and part of the property plundered being found in the prisoner's house, out

The prisoners Jumai, Sheodut, and Ressaul, were charged with Dacoity, and plundering property to the amount of 1157 rupees, and were tried for that offence at the first sessions of 1821 for Zillah Allahabad.

The prosecutrix Musst. Hureea deposed, that one night, in Bhadoon, she was sleeping at home with the females of her family, when she was roused by persons attacking the house. A ladder was applied to the wall, by which five of the gang entered, and opening the door, admitted the rest, a great number, she could not say how many. They proceeded to strip her, and those with her, of their ornaments; and having possessed themselves of these, and what else they could find worth taking in the house, departed. The screams of Hureea brought

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Case of JUMAI and others.

a neighbour (Allahdeen) to her assistance; but he was severely wounded, and they escaped. The property plundered was estimated at about 1100 rupees, of which about 100 rupees worth was recovered.

Suspicion fell upon the prisoners, through the report of one Sheodeenwa, and by means of information obtained by certain spies who had been employed on the occasion by the police officers. Enquiry and search followed, and part of the property lost was discovered, as deposed by the witnesses Zoorawur Allee, Ram Singh, Mohun, and Ghureeb, in the possession of Jumai and Sheodut. The other prisoner Ressaul confessed before the Magistrate having been concerned, and his confession was attested by two witnesses.

of the British territory, this was not considered sufficient proof of receipt within the British jurisdiction.

The *futwa* of the law officer of the Court of Circuit convicted the three prisoners; and the Judge, on referring the case, stated, that he concurred in that finding, and considered the prisoners justly liable to the full penalty of the law. After taking a *futwa* from the law officers, which declared all the three prisoners guilty of participation in the offence charged, the officiating Judge (W. Dorin) recorded his opinion in the following terms.

"The proof in this case stands thus.

"A *lota* and a *thalee*, sworn to by the prosecutrix as her property, taken at the Dacoity, (which another witness supports,) are sworn to have been found at the house of Jumai, on search, and he gives no good account regarding the way he came by them. This could not fix on him more than the knowing receipt; but as it would appear from the evidence of Ramsing that the Mouza in which the finding took place is without the Company's territory, I think there can be no conviction as for knowing receipt within that territory.

"Against Deodut there is only the fact, that a turban was found on him, which the prosecutrix deposes was part of the property taken; and which he brings a witness to say was given him by a relative at Lucknow. The Magistrate calls it a plain turban, not easy to be identified. I do not think there is evidence to convict this prisoner.

"With regard to Ressaul (No. 3), against whom there is solely his Foujdaree confession, (for the sudder *futwa* is inaccurate as to property being found on him,) I think a fair construction of his statement, without drawing inferences from it, will only fix on him criminal privity, and concealment, for which he should be sentenced to two or three years imprisonment. The robbery was within the Company's limits."

The second Judge (C. Smith) concurring in this view of the case, the sentence issued as follows.

"The *futwa* of the law officers of the Nizamut Adawlut convicts the prisoners Jumai, Deodut, and Ressaul of participation in the Dacoity, attended with wounding, committed at the house of the prosecutrix.

"The Court observe, that the dacoity took place within the British territory; that the proof against Jumai is, that certain articles of property taken at the Dacoity are sworn to have been found in his house, on its search by the police, and he does not give any good account

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JUMAI and others.

how he came by them. This the Court consider insufficient to fix on him more than the knowing receipt of the property; and as the village in which the finding took place is without the British territory, there is not considered to be satisfactory evidence to fix on him the knowing receipt within that territory.

"Against Deodut the Court do not consider that there is any sufficient proof.

"Ressaul is considered to be convicted on his own confession before the Magistrate, (the only evidence against him on the record,) of privity to the Dacoity at the time and place of its commission, and concealment of the same.

"Under the discretion vested in them by the *futwa*, the Court sentence the said Ressaul to be imprisoned with labour for three years from this date; and direct that Jumai and Deodut be discharged."

KEELAL,
against
CHUNDWA.

1821
May 31st.
CHUNDWA'S case. The prisoner confessing a murder, and pointing out human bones which he alleged to be those of the person murdered; held by the Nizamut Adawlut, that this is not a sufficient finding of the body, to warrant a capital sentence; the bones not admitting of identification.

Charge—MURDER.

THIS case was tried at the first sessions of 1821, for zillah Mirzapore.

The prisoner was the servant of the prosecutor. He was convicted by the *futwa* of the law officer of the Court of Circuit, on his own confession at the Thana, that he had thrown the deceased (a boy of six years old) into the Raeepooree Nullah, having previously strangled him. It appeared in evidence, that just as he with his master's family was on the eve of returning from Chunargurh, where they had been on business, the prisoner inveigled his son, Bakir, a child about six years of age, from the company of his father, while the latter was busily engaged making a purchase at a shop, since which hour the child had never been seen or heard of. The prisoner was apprehended the next day, and admitting his having carried off the child, amused the prosecutor for seven or eight days, by taking him to different places, at which he pretended he had left the child. He ultimately, however, confessed before the Cutwal of Chunargurh, that he had strangled the boy, and thrown him into a nullah, in the bed of which he had buried the body. He moreover carried the police officer to the spot, and pointed out a heap of human bones, which he declared were the bones of the murdered boy. There was no flesh on the bones, and no clothes near the spot, by which means the skeleton could be recognized. The child had no ornaments on its person at the time of its disappearance. There existed apparently no enmity between the prisoner and the prosecutor, nor was there any discoverable motive for his perpetration of the murder. His confession was proved to have been made in the most free and voluntary manner, and the fact of his pointing out the bones on the spot where he had

previously perpetrated the murder of the child was fully substantiated. In referring the case for the final orders of the Nizamut Adawlut, the Judge of Circuit observed, that he could not dissent from the *futwa*, but that he left to the Court's consideration, the apparent want of motive to the act of which the prisoner acknowledged himself guilty.

The *futwa* of the law officers of the Nizamut Adawlut declared the prisoner guilty of murder on his own confession, and liable to suffer death. The third Judge (S. T. Goad) concurred in the above *futwa*, and observed, with reference to the peculiar nature of the evidence, and in consideration of all the circumstances of the case, particularly the want of identification of the bones pointed out by the prisoner (which indeed did not admit of it) to be those of the deceased, that he was of opinion the prisoner should be sentenced to imprisonment for life in the Allipore jail. The second Judge (C. Smith) on the other hand, was of opinion, that the prisoner should be either acquitted or sentenced capitally, adding that his confession at the Thana was corroborated by the circumstances sworn to by the prosecutor, whom there was no reason to disbelieve; that if the confession as to the fact of the murder was to be believed, there was no reason to discredit the assertion as to the bones; that the prisoner, if he killed the child, must have known where he buried the corpse; that taking the whole confession as true, the murder was a cruel and deliberate one, nor did there appear any reason for remitting the capital punishment; that the only imaginable ground was the prisoner's age, stated at the Thana, and before the Magistrate, to be fifteen only, but which was stated in the Circuit record to be nineteen; and lastly, that as to motive, there might have been a lurking enmity against the father, or there might have been some other motive, neither confessed nor confessable. The officiating Judge (W. Dorin), however, inclined to approve the sentence proposed by the third Judge, expressing his opinion in the following terms.

"I think all the circumstances of this case (coupled with the Thana confession) induce a strong presumption that the prisoner destroyed the child of the prosecutor, by throwing him into a nullah and drowning him; but there seems some ground of doubt on the question regarding the bones; for if he threw the child into a nullah, in which there was a flow and ebb of the tide, I do not see how the body was to remain in the same place. I think it a case in which a capital sentence, as being irrevocable, would be inexpedient; and I think there are many such cases among those which come before this Court, and in which it is right to proceed with caution, considering the general suspicions against native evidence, and the mode in which the Nizamut Adawlut tries cases, without having the accused and witnesses before it. I think the sentence should be imprisonment for life, weight being allowed to the circumstance of its not being clearly shewn that the body or its remains were found."

The prisoner was condemned to imprisonment for life in the jail at Allipore, accordingly.

1821.
June 16th.
CHAITOO TELEE'S case.

JUGGOO,
against
CHAITOO TELEE.
Charge—MURDER.

Prisoner declared guilty by the *futwa* of murder by poisoning. The Court of Nizamut Adawlut do not concur in the conviction, the only evidence of the murder being an alleged village confession, and the body of the missing person not having been found; but it being proved that the missing person was seen last in the prisoner's company, he was sentenced to be imprisoned for life, or until the missing person should appear, or his existence subsequently to his parting with the prisoner be ascertained.

THIS trial came on at the 2d session of 1820, for zillah Sarun. The prisoner was charged with mixing poison in the food of Sri Kishen, the prosecutor's father, and thereby causing his death. It appeared from the evidence in this case, that Sri Kishen and his son, the prosecutor, came with several other *Beoparees*, to the *Hauth* of Saheb Gunge, near Chuprah, in the beginning of the month of Assaur, having with them two bullocks laden with *Huldee*, for sale. In the afternoon Sri Kishen desired his son to return home with one of the bullocks, the load of which had been disposed of. The load of the other bullock Sri Kishen had agreed to carry to the prisoner's house, where he was to receive the price of it, about seven rupees, and they left the bazar together.

Some days after this, the prosecutor, finding that his father did not return, went, with others, to enquire what had become of him. The prisoner, on being questioned, tried to escape, but was seized; and on being repeatedly asked by the inhabitants of the village, what had become of Sri Kishen, he admitted that he had mixed the poison called *Dukra* in his food, which caused his death, and that he had thrown the body into the river. The prisoner denied the charge before the Thanadar, the Magistrate, and the Court of Circuit; and asserted, not only that he never purchased *Huldee* from Sri Kishen, but that he had not seen him, and declared that he was severely beaten, which had forced him to say that he had poisoned him. The law officer of the Court of Circuit convicted the prisoner of having administered poison to Sri Kishen, and thereby caused his death; but declared him only liable to *Tazeer*, *Kissas* and *Deeut* being barred. The Judge of Circuit, in referring the case, observed, that although the body was not found and the bullock was still missing, and no *Huldee* was found in the prisoner's house, yet he saw no reason to believe that his confession at the village, when first taken, was extorted; and that the prisoner's denial of having had any transaction with Sri Kishen, when it was clearly proved that he purchased a load of *Huldee* from him, and that they left the *Hauth* together, since which Sri Kishen had not been heard of, afforded strong reason to suspect him, added to which there appeared grounds to believe that he had before committed a like offence. Under these circumstances, the Judge of Circuit considered the prisoner guilty of the wilful murder of the prosecutor's father, by administering poison to him, and therefore referred the case for the final orders of the superior Court. The prisoner Chaitoo Telee was convicted by the *futwa* of all the law officers of the Nizamut Adawlut, of the murder of Srikishen Culwar, by administering poison to him, and declared liable to discretionary punishment by *Seasut*. The only evidence, however, of the murder being a confession alleged to have been made to the villagers by the

1821.
CHAITOO TELEE'S case.

prisoner at the time of his apprehension, and the body of the missing person not having been found, the Court of Nizamut Adawlut (present W. Leycester and S.T. Goad) did not concur in the said *futwa;* but it being satisfactorily proved that the missing person Sri Kishen left Saheb Gunge in company with the prisoner, since which he had not been heard of, the Court judged proper to sentence the said Chaitoo Telee to be imprisoned for life, or until Sri Kishen should appear, or his existence subsequently to his parting with the prisoner should be ascertained.

1821.
June 26th.
HATIM ALI's case.

GOVERNMENT,
against
HATIM ALI.
Charge—MURDER.

The minority of a witness is not sufficient to preclude him from being sworn, provided he have a competent sense of the nature of an oath.

THE prisoner was charged with the murder of his wife, and the trial came on at the Moorshedabad monthly sessions, for April 1821. The prisoner was a burkundaz belonging to the Thana at Kalcapore, subject to the jurisdiction of the Moorshedabad city. It appeared in evidence, that the prisoner was in the habit of locking up his wife, whenever his duty obliged him to be absent at night from his home. The only person residing with them was a boy, about ten years of age, the adopted son of the deceased, and her sole companion when placed under the restraint of lock and key.

It appeared also, from the statement of this boy, that on the morning on which the murder occurred, the prisoner came home before gunfire, and desired the boy to leave the house, which he refusing to comply with, he threatened to beat him. The witness then left it, and went to the house of a woman named Chandoo, and did not return until after sunrise. Seeing no one, he looked through a hole in the wall, and observed the deceased apparently dead, of which he informed the Darogha. The Darogha immediately repaired to the house, and finding the door locked, made a smith wrench it open, when the body of the deceased was discovered lying partly on a *charpai,* with two sabre wounds, weltering in blood, and the prisoner had absconded. Three days after, the prisoner was apprehended, not far from the Thana, with his sword, which is said to have been stained with blood. He made no attempt to escape, or any resistance.

The prisoner denied the murder, and in his defence stated, that after patroling the streets the whole of the night, he returned home, and found his wife had been murdered during his absence ; that he laid his spear and pistol aside, and went to the Thana with the intention of giving information of the murder, but seeing the Darogha get up, and go towards his house, he was alarmed and fled, without communicating the circumstance. It appeared that the prisoner was unfortunately subject to fits of jealousy, and the person whom he suspected of criminal intercourse with his wife was the Darogha.

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There was, however, not the slightest cause for suspicion against the Darogha, or for imputing infidelity to the wife. Near the body of the deceased was found a *chadur* belonging to the prisoner, stained with spots of blood, which he acknowledged to be his, and which he stated he left there previously to his going to the Thana in the evening. His sword is said to have had also marks of blood on it. This point, however, appeared to the Judge of Circuit doubtful; and when the witnesses were examined before him, and the sword shewn them, they could not assert with certainty whether the marks on it were caused by blood or rust, but stated them to be precisely the same marks as were on it at the time of the prisoner's apprehension.

The law officer of the Court of Circuit, in his *futwa*, declared the prisoner convicted of murder on strong presumption, and liable to suffer death by *Seasut*; in which finding the Judge of Circuit concurred, and therefore referred the case for the final orders of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner, on strong presumption, of the wilful murder of his wife. The chief Judge (W. Leycester) did not think that there was any thing like sufficient circumstantial evidence to convict him, and that he must be acquitted. The officiating Judge (W. Dorin) was of opinion that there was strong reason to believe that the prisoner murdered his wife, probably from jealousy. He proposed that further evidence be taken, and that instructions to the following effect be issued; 1st, that the boy Hingoo Khan be examined on oath to the circumstances he had stated without oath, on the trial; the Judge of Circuit having assigned as the reason for not swearing him only that he was a minor, and it being inferrible from the manner of his statement, that he was fit to be put on oath. 2dly, that the evidence of the witnesses to the Thana and Foujdaree examinations of the prisoner should be taken; this being a point of form necessary to enable the Court to act on those examinations. 3dly, that the burkundazes be further examined as to what interval elapsed between the morning of the deceased being killed, and the time of the prisoner's apprehension. 4thly, that evidence should be taken as to his absence, in the interval, from his place of abode, and also as to where he was till apprehended, if any person could be found acquainted with this latter point. He observed also, that the circumstances spoken to by the boy, the absconding of the prisoner, (which could be made out, though it did not then appear clearly on the record,) and the *ahotee* stained with blood, were strong points against the accused. The alleged marks of blood on the sword, he did not rely on. He observed also that the ornaments of the deceased were not removed, so that avarice would not appear to have been the motive. The second Judge (C. Smith) was inclined to think that the evidence was enough to convict the prisoner; but he had no objection to the further enquiries suggested by the officiating Judge. As to the non-swearing of the boy Hingoo, who clearly appeared sufficiently intelligent to be sworn, the Judge of Circuit's attention, he thought, should be called to the circular order of the 23d of January, 1810.

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HATIM ALI'S CASE.

The following orders were accordingly issued, by the 2d and officiating Judges. "The Court having had before them the proceedings on the trial of Hatim Ali, burkundaz, charged with murder, and the *futwa* of their law officers on the said trial, previously to passing any sentence deem it necessary that further evidence be taken at the ensuing sessions according to the following instructions. 1st, That the boy Hingoo Khan be examined on oath, to the circumstances stated by him without oath, on the trial. 2d, That the evidence of the witnesses to the Thana and Foujdaree examinations of the prisoner be taken. 3d, That the burkundazes who were examined on the trial be further examined as to what interval elapsed between the morning on which the deceased was killed, and the time of the prisoner's apprehension. 4th, That evidence be taken as to the prisoner's absence, in the interval, from his place of abode; and also as to where he was till apprehended, if any person can be found acquainted with this latter point.

"The Court observe, that the Judge of Circuit assigns as the reason for the boy Hingoo Khan not having been examined on oath on the trial, solely that he was a minor; while it by no means appears from the tenor of his statement that he is of deficient intelligence, or unfit to be sworn; and Mr. French has no where stated that Hingoo Khan did not appear to have a competent discretion, or to entertain a sufficient sense of the nature of an oath. The Court desire the future attention of the Judge of Circuit to the circular order of the Nizamut Adawlut, dated the 23d January, 1810."

On receipt of the further evidence required by the above order, the officiating Judge expressed his opinion, that the same conclusion must be drawn, that Hatim Ali murdered his wife, that the presumptive evidence of the fact was sufficient to convict him, and that he should be capitally sentenced, unless the 2d Judge, in consideration of the dissenting voice of the chief Judge, should deem a sentence of imprisonment for life preferable, to which he expressed his readiness to agree; and the second Judge concurring in this suggestion, a sentence of imprisonment for life was passed accordingly.

1821.
July 30th.
Case of AKALOO and GOORDIAL.

GOVERNMENT,
against
AKALOO and GOORDIAL.
Charge—CONTUMACY, DACOITY, &c.

It is essential to conviction on a trial for contumacy, that it be proved the proclama-

THE prisoners Goordial Koormee and Akaloo Koormee, were charged with committing a dacoity upon a boat, and plundering treasure to the amount of 80,000 rupees, the murder of Thakoor Singh, and wounding Bainy Singh and Bustee Singh, at midnight, on the 17th of April, 1819. They were originally tried for these offences at the 1st sessions of 1820, for zillah Ghazeepore. The prisoners confessed in the Foujdary having accompanied the Dacoits to

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perpetrate this robbery, and the former stated, that he was promised some of the treasure plundered. On trial, however, they both declared they were not at the Dacoity, and alleged they had been taught to make the statements they did before the Magistrate; but this assertion they were unable to prove. Jogeea, an accomplice in the Dacoity, who was recommended for pardon, deposed on oath that the two prisoners were at the robbery; and several persons deposed to Goordial's having acknowledged in their presence his being concerned, and that Akaloo absconded from his home immediately after the crime was committed. The *futwa* of the law officer of the Court of Circuit declared the prisoners guilty of the crimes with which they were charged; and the Judge of Circuit concurring in that opinion, considered them deserving of the sentence prescribed in clause 1, section 4, Regulation LIII. of 1803. By the *futwa* of the law officers of the Nizamut Adawlut also, the prisoners were declared convicted, and liable to discretionary punishment; but it appearing, on examination of the proceedings, that the prisoners, having absconded, had been duly proclaimed under the 9th Regulation of 1808, the Court (present W. Leycester) observed, at the same time that he fully agreed in the conviction of the prisoners, that the course pursued against them was at variance with, and virtually rendered void the rules established by the 7th and 8th sections of Regulation IX. 1808, for the trial of persons proclaimed under that Regulation, and who were apprehended subsequent to the period fixed by the proclamation for their attendance; Goordial having been apprehended upwards of eight months, and Akaloo upwards of 12 months after the period fixed. The Court, therefore, directed that the prisoner should be tried at the ensuing sessions, in the manner prescribed in those sections, and in no other way. In consequence of these orders, the Magistrate of zillah Gazeepore made a reference to the Court of Nizamut Adawlut to the following purport.

On attentively considering the remarks of the Nizamut Adawlut, that "the course pursued against the prisoners is at *variance* with, and *virtually renders void* the rules established by the 7th and 8th sections of Regulation IX. 1808," &c. and again, "that the prisoners be tried at the ensuing sessions in the manner prescribed in those sections, and *in no other way*," it occurred to him, that at the moment of recording those proceedings, the Nizamut Adawlut had not perhaps, particularly adverted to certain parts of section 10, of the Regulation in question, and to circular orders of the 25th June, 1810: under those provisions, he observed it might be proper, probably, that these prisoners should be committed both for the specific charge, and for being absent under the proclamation; but that if they were found guilty of the former charge, and it involved a severer punishment than the perpetual imprisonment prescribed for the latter, it would appear to be superfluous to try them for the latter. He added, that the Judge who tried the prisoners probably so considered it, for they were committed on both charges; but that he had desired, in conformity with the present orders, that witnesses be again present at the ensuing sessions, under the sections quoted by

tion was made by beat of drum at every Thana, within the Magistrate's jurisdiction; and in a trial for this offence, a *futwa* from the law officer is not requisite.

Proclaimed persons having been tried on the charge of dacoity and murder, for which they were proclaimed, and not on the charge of contumacy, and the Court having ruled that they should have been tried on the latter charge first, it was determined on their being acquitted of the charge of contumacy, that they should be tried *de novo* on the charge of dacoity and murder.

the Nizamut Adawlut. As, however, these doubts had arisen in his mind, and as no inconvenience would arise from submitting them, he begged the orders of the Nizamut Adawlut on the subject. To this reference the Court replied, that their orders of the 8th of December were not made without due consideration of the 10th section of the Regulation, together with the circular orders quoted by him; that the 10th section and the orders in question clearly applied only to any further charge that might be made against a proclaimed person, not being that for which he was proclaimed, and regarding which all trials are superseded by the law subjecting him to trial, and on conviction to the punishment prescribed for, such contumacy by the 7th and 8th sections of Regulation IX. 1808; that in the case in question, the prisoner was tried, not on any separate charge, but for that alone for which he was proclaimed, to remedy which was the object of the Court's order; that the Court were not insensible to the objection that might be made to this state of the law, that by superadding contumacy to the crime of dacoity attended with murder, the liability to punishment is not aggravated, but diminished; that this might be an objection to applying the process of proclamation to dacoities attended with murder, but that while the criminal law stood as it then did, it must be enforced according to its letter.

A second reference was, on the 7th of April 1811, made by the Magistrate of zillah Ghazeepore on the same subject. As a person proclaimed for a specific dacoity, and apprehended after the prescribed two months is not liable, he observed, to be tried for that dacoity, but only for contumacy, (according to the resolutions of the Nizamut Adawlut, dated 8th December and 17th March last,) and as contumacy under the Regulation can only relieve him from the penalty attached to dacoity, and not from that attached to any other crime, he begged leave to enquire whether, in the case supposed, the proclaimed person did not continue liable to be tried separately for a murder committed in prosecution of the dacoity. Secondly, in the case supposed, the proclaimed person having been convicted of dacoity *attended with murder* by the Court of Circuit and Nizamut Adawlut and the law officers of both Courts, but no sentence having been passed, he begged to submit, whether the evidence taken in that case was not sufficient to commit him upon for the murder alone, without holding further proceedings.

As the decision on these points, he added, would point out the course to be pursued in a case then depending, and as the Judge of Circuit was then at the station, he hoped to be furnished with the early orders of the Nizamut Adawlut upon them. The Court, however, concluding that the queries above submitted had reference to the case of Goordial Koormee and Akaloo Koormee, directed by their orders of the 8th December last to be brought to trial for contumacy, under sections 7 and 8, Regulation IX. of 1808, did not consider it necessary to reply specifically to the points submitted for their consideration and orders, but directed that the Magistrate should conform to their orders of the above mentioned date, by bringing the prisoners in question to trial for contumacy, before the

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Judge of Circuit, then holding the sessions of jail delivery at his station, adding, that the Judge of Circuit would of course, under the rule contained in section 8, of the Regulation before cited, refer the whole of the proceedings to the Nizamut Adawlut, who, in passing such final sentence as the circumstances of the case might appear to warrant, would advert to the questions submitted in the Magistrate's letter; with their opinion respecting which he would hereafter be furnished. The trial for contumacy came on at the 2d sessions of 1820, and the Judge of Circuit deemed it necessary to refer the proceedings to his law officer for a *futwa*, by which they were acquitted of the charge of contumacy, on the ground of its not appearing that they were acquainted with the fact of a proclamation having been made for their attendance. In referring the case for the final orders of the Nizamut Adawlut, the Judge of Circuit made the following observations.

"The prisoners are acquitted on the present charge; and it remains for the Court to determine how far they are liable to suffer under their prior conviction.

"Whatever the opinion might have been, had they been *convicted* on this trial of contumacy; the *acquittal* would seem, to my judgment, to remove every bar to an equitable sentence; that is, a sentence founded upon the verdicts before returned against them for the crime they acknowledged themselves guilty of, and, but for the commission of another offence, had ere this suffered for. I take the liberty of suggesting the expediency of an early modification of Regulation IX. 1808, which certainly, as it now stands, commutes, in capital cases, the penalty of death to a lesser punishment, if the murderer (or whatever he may be) will only add contumacy to his original crime, and plead guilty to the charge, when brought to trial for it." The Court of Nizamut Adawlut (present W. Leycester and S. T. Goad) passed the following sentence. "The Court do not consider the prisoner duly convicted of contumacy, from the omission to promulgate the proclamation by beat of drum at each of the Thanas in the Magistrate's jurisdiction. The Court therefore acquit him of the same; and (as in such cases provided at the conclusion of the 8th section of Regulation IX. of 1808, in cases of acquittal of contumacy, that the Nizamut Adawlut will pass such orders as the circumstances of the case shall appear to warrant) direct that the prisoners be put on their trial under the original charge of gang robbery attended with murder, it being deemed necessary to cancel the proceedings already held on that charge, as they were not then liable to that procedure.

"The Court remark, that the Circuit Judge ought not to have taken a *futwa* on the trial for contumacy, but should have reported his opinion as to their guilt or otherwise*.

* The defect in the law pointed out by the Judge of Circuit, has been since remedied by the enactment of Regulation V. 1822.

1821.

Aug. 7th. Case of BHURAICHEE and others.

GOVERNMENT, *against* BHURAICHEE and others.

Charge—MURDER.

Case of four Hindoos and two Moosulmauns, convicted of forcing a woman to complete the sacrifice of *suttee* against her will, by repeatedly throwing her on the pile from which, after she had voluntarily ascended it, she was desirous of escaping. Two of the Hindoos, (her relations) sentenced to one years imprisonment; two others (not her relations) to two years; and, of the two Moosulmauns, one (who struck her with a sword) sentenced to five years imprisonment, and the other to three years

THE prisoners Bhuraichee, Sheolal, and Bhichook, were charged with wilful murder, the prisoner Roosa with being an accessary to the same, and the prisoners Hurreepal and Ijrail with being present at, and abetting the same. The trial came on at the 1st sessions of 1821, for zillah Goruckpore, and the transaction in which it originated was thus detailed by the Circuit Judge. "One Seetloo, a Brahmin, died when absent from his family. A fortnight afterwards, his widow, Hoomuleea, a girl of about 14 years of age, proceeded to burn herself; the pile being prepared by her nearest relations, then at the village she resided in. Her father, Pultun Tewarree, was in another part of the country, and does not appear to have been made acquainted with what was passing. Whether the sacrifice was originally a voluntary one, has not been ascertained: it must be presumed it was so.

"The preparatory rites completed, Hoomuleea ascended the pile, which was fired by her uncle, the prisoner Sheolal. The agony was soon beyond endurance; and she leapt from the flames: but, seized by Sheolal, Bhichook, and others, she was taken up by the hands and feet, and again thrown into the flames, much burnt, and her clothes quite consumed. She again sprang from the pile, and running to a well hard by, laid herself down in the watercourse, weeping bitterly. Sheolal now took a sheet, offered for the occasion by Roosa, and spreading it on the ground, desired her to seat herself upon it: "No, she said, she would not do this; he would again carry her to the fire; and she *could not* submit to this: she would quit her family, and live by beggary; any thing, if they would have mercy upon her." Sheolal, upon this, swore by the Ganges, that if she would seat herself on the cloth, he would convey her to her home. She did so. They bound her up in it; sent for a bamboo, which was passed through the loops formed by tying it together; and, carrying it thus to the pile, now fiercely burning, threw it bodily into the flames. The cloth was immediately consumed, and the wretched victim once more made an effort to save herself: when, at the instigation of the rest, the Moosulmaun Bhuraichee approached near enough to reach her with his sword, and cut her throat: the head fell back; and she was released from further trial by death. The number of spectators before whom this diabolical and most lamentable sacrifice was exhibited, is variously stated, but two hundred persons were probably witnesses of it. The charge against the prisoners are, wilful murder against Bhuraichee (1), Sheolal (2), and Bhichook (3); Roosa (4) is arraigned as an accessary before the fact; and Hurreepal (5) and Ijrail (6) for being present and abetting the same; and they are all convicted on these charges respectively. The doubt expressed in the *futwa*, as to whether the

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deceased died by fire or the sword, is, so far as the charges go, a distinction without a difference; and as a query affecting the verdict, not worthy of notice. The murder remains the same; and the deathblow, if so it was, of the sword, was the most merciful act (though not intended so) exhibited throughout the whole transaction." With reference to the amount of punishment which should be awarded in this case, the Circuit Judge expressed himself as follows. "I verily believe, I but echo the wishes and expectations of nineteen twentieths of even the Hindoos of this community, when I urge death as the requital of this atrocity. In justice, all the prisoners should be equally condemned to this atonement; but the example may be deemed sufficient, if extended only to the three first mentioned. If so, the others should certainly be sentenced to the award of the law next in point of severity; and be imprisoned for life in banishment. There never was, and never can be a more crying occasion for example, and never can be subjects entitled to less sympathy than these convicted monsters. I leave them to the disposal of the Court, without the power or desire of interposing one plea in mitigation of that punishment which it would be a false and erring feeling to wish to shield them from."

The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoners Sheolal and Bhichook of having, by force and against her will, thrown back Musst. Hoomuleea to the fire of the suttee pile from which she had leapt off; the prisoner Bhuraichee Moosulmaun of having, at the instigation of the others, smote her with a sword; the prisoner Roosa Moosulmaun of having been abetting therein; and the prisoners Hureepal and Ijrail of having been present, and instigating the same; and declared them all liable to punishment for their respective shares in the crime, at the discretion of the Court; adding, that the punishment of Sheolal and Bhuraichee, as the principal actors, might extend to death. The chief Judge (W. Leycester) was of opinion, that the prisoners Bhuraichee and Sheolal should suffer death, and that the others should be confined for life. He did not see how the Court could be justified in passing any other sentence; but as the case was quite new, he observed, it was desirable that it should go before another Judge.

The opinion of the second Judge (C. Smith) was to the following effect. "I differ entirely from the 1st Judge, being decidedly of opinion that none of the prisoners should be sentenced capitally or even to perpetual imprisonment. The suttee, in the first instance, appears to have been voluntary: even if we believe the statement of those witnesses who are under a suspicion (not, it would seem, altogether unfounded) of being hostile to the accused, the girl ascended the pile, and laid herself down upon it without force and without aid. The facts of the subsequent violence may be fabricated or exaggerated. The whole charge seems to have been got up under the influence of the Pauls of Pergunnah Maholee; and on this very account, Mr. Law, the 3d Judge, thought the evidence of the six first witnesses unsatisfactory, and on that account put off the case to another session. It may be doubted whether, without such a stimulus, it

would be practicable to procure the evidence of Hindoos against Hindoos in a case of this description. In the examination of the prisoner Bhichock Tewaree, standing No. 5 of the Foujdary papers, I see no acknowledgment of any offence whatever; and if this is the examination referred to in the *futwas*, I think it disgraceful to the law officers of both Courts to have dwelt upon it as part of the proof against the prisoner; nor does this examination, or that of Sheolal Tewaree appear to have been copied into the record, or read over to the two prisoners upon their trial. In the examination of Sheolal (No. 3.) there does appear an acknowledgment that he threw the widow again on the pile after she had leapt out of it. Taking the facts as they are charged, and as the *futwas* state them to have been proved, I think the uncle Sheolal (who could have no malice towards his niece, and who seems to have acted under an impression of the indelible disgrace that would accrue to his family, if the suttee, once begun, should not be completed) is an object of pity rather than of punishment. The suttee was irregular, inasmuch as the police officer was not there, and as the widow (a Brahminee) burnt without the corpse of her husband; but frequent irregularities occur in this detestable practice, yet no one has ever yet been hanged for it, or even punished, that I can recollect, by temporary imprisonment for a misdemeanour. Our Government, by modifying the thing, and issuing orders about it, orders which even the Government and the sudder Judges themselves do not appear clearly to comprehend, have thrown the ideas of the Hindoos upon the subject into a complete state of confusion. They know not what is allowed, and what interdicted; but upon the whole, they have a persuasion that our Government, whom they most erroneously suppose to be indifferent about the lives of natives, are rather favourable to suttee, than otherwise. They will then believe that we abhor the usage, when we prohibit it *in toto* by an absolute and peremptory law. They have no idea that we might not do so with the most perfect safety. They conceive our power and our will to be commensurate. That a suttee, in the outset voluntary, shall be deemed murder in those conducting it, if they force the widow upon the pile from which she has escaped, I do not find positively declared in any of the instructions promulgated through this Court; nor do I know whether by the *shaster* it is legal or illegal. In all the rules which have been issued, the *shaster* is quoted as the authority. The essence of the rules is, that if the suttee be according to the *shaster*, it is lawful; if not, criminal. With this declaration from the supreme authority, I do not see how a Hindoo can, in common sense or common equity, be made amenable to the Moohummudan law for the offence. Of the two other prisoners, Bhichook Tewaree seems to be a relation too, and to stand nearly in the same predicament with Sheolal.

"The two Rajpoots, Hurripal and Ijrail, though they have not the plea of relationship, and of the fear of stigma, should the suttee have been incomplete, may have entered into the feelings of the Tewarees, and assisted them in what they deemed a commendable and proper act. *Tantum religio potuit suadere malorum!* For the Moosulmauns, Roosa

1821.

Case of BHURAICHEE and others.

and Bhuraichee, there is less excuse; but even they have the defence of gross ignorance. They may have been brought to think, that there was no great harm in furthering a result which appears to be tolerated by the Government throughout the country, and with regard to which it is impossible for them to discern the exact bounds which separate what is permitted from what is forbidden. I would sentence Roosa to three years, and Bhuraichee to five, with labour. The two Rajpoots, with Sheolal and Bhichook, I would release."

The officiating Judge (W. Dorin) was of opinion, that the circumstances occurred nearly as stated by the witnesses for the prosecution. The presence of a police officer, he observed, and the giving information at the Thana, are not necessary under the existing suttee rules. But that under those rules, as they now stand, the assisting at an illegal suttee, and the using force against the widow at any suttee, are punishable offences. The objection, that the natives do not understand nice distinctions, could not, he thought, be admitted; unfortunately the chief promulgation of all criminal law being usually in the shape of a criminal sentence. In this case, there seemed to him to have been an impression among the people present that they were doing something not right.

Under all the circumstances of the case, the following order and sentence were issued by Messrs. Goad and Dorin.

"The Court observe, that, under the promulgated rules on the subject of suttee, the rite in this instance was illegal: the widow Hoomuleea having been a Brahmin, proceeding to burn without the body of her husband, who was absent from her when he died; and that every species of compulsion against the widow having been prohibited by those rules, the forcing Hoomuleea back to the pile, against her will and intreaty, and more especially the striking her with a sword, were punishable acts.

"Making allowance, however, for the superstitious prejudices of the Hindoos concerned, and for the ignorance of the Moohummudans, the Court do not consider any of them guilty of murder; and viewing the case as one of culpable homicide, pass the following sentence, viz.

"Bhuraichee to be imprisoned, with labour, for five years.

"Roosa to be imprisoned, with labour, for three years.

"Sheolal and Bhichook Tewarees (uncles) to be imprisoned, without labour, for one year.

"Hurripal and Ijrail, Rajpoots, two years."

GOVERNMENT, *against* CHUNDER DEEN HAVILDAR.

1821. Aug. 25th. CHUNDER DEEN HAVILDAR'S case.

Charge—FORGERY.

Prisoner having lent the sum of 51 rupees to a person since deceased (whose bond he held on plain paper, bearing interest at the rate of 24 *per cent per annum*) forged and filed a stamped bond for the same amount, at 12 *per cent.* Held that this is an act of forgery not deserving of less than three years imprisonment.

THE prisoner was arraigned on a charge of forgery, at the 1st session of 1821, for zillah Purneah, and the trial was referred by the Circuit Judge to the superior Court, under the provision contained in section 9, clause 3, Regulation XVII. of 1817, he being of opinion, that the least degree of punishment he was thereby authorized to award was far more than adequate to the crime which had been committed by the prisoner. The case was in substance as follows. The prisoner, who was an Havildar of the Purneah Provincial Battalion, lent the sum of 51 rupees to Ram Singh, who was a sepoy in the same corps, from whom he received a bond on unstamped paper, bearing interest at 24 rupees *per annum*. Ram Singh having died without heirs, his property was placed in deposit in the Foujdary Court. The prisoner gave in a petition to the Magistrate, setting forth his claim, which was established by the evidence adduced, and an order was passed that he might realize his claim, after it had been ascertained whether Ram Singh had any heir. Some time afterwards the prisoner gave in a bond to the Magistrate, written on stamped paper, and bearing the date of the original bond, (viz. 9th September 1820;) but it appeared that the stamp on which it was written was not sold to him till the 23d of March 1821. The bond on stamped paper differed from the original only in regard to the rate of interest, which in the original was stated at 24 *per cent.* and in the other "at the rate of interest allowed by Government." The prisoner pleaded guilty to the charge, and the law officer of the Court of Circuit declared in his *futwa*, that he was convicted of forgery, in which *futwa* the Circuit Judge agreed, and sentenced him accordingly to three years imprisonment, in conformity to the provisions contained in the Regulation above quoted; but from all the circumstances of the case, he expressed a hope, that the superior Court would think him deserving of a mitigation of punishment. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of forgery, and declared him liable to discretionary punishment. The officiating Judge (W. Dorin) observed, with reference to the evidence adduced in this case: "I am of opinion this was forgery within the meaning of clause 3, section 4, Regulation II. 1807, and that no part of the punishment of three years imprisonment should be remitted. Before the Magistrate, the defendant seems to have stated that the deceased sepoy executed this bond, as well as the one on plain paper. It is observable that the one on stamp paper specifies 1 *per cent. per* month interest, whereas the real bond specified 2 *per cent. per* month. It is inferrible that the defendant had suspected that, with the real bond, he might not get his interest. There is fraud besides falsity, in the

1821. CHUNDER DEEN HAVILDAR'S case.

stamped one." The Chief Judge (W. Leycester) fully concurring in the *futwa* and in the above opinion, and seeing no ground whatever for further mitigation of the sentence of three years imprisonment passed upon the prisoner by the Circuit Judge, that sentence was confirmed.

1821. Aug. 27th. KUNTHEERAM'S case.

BOSTUM, *against* KUNTHEERAM.

Charge---MURDER.

Case of murder of a child for the sake of of its ornaments. Proof that the prosecutor promised not to prosecute, if prisoner would restore the ornaments, held not to be sufficient to bar a capital sentence.

THIS prisoner was tried at the 1st sessions of 1821, for zillah Purneah, on the charge of having murdered the prosecutor's son. It appeared in evidence, that the prisoner murdered the deceased (Allum Chund) a boy of eight years old, who was his own cousin, for the sake of some gold and silver ornaments which he wore, and that the murder was committed by cutting his throat with a *kuchea*, or sickle. The prisoner admitted his guilt before the Darogha and in the Foujdary. Before the Court of Circuit he pleaded not guilty, and stated, that the prosecutor promised to conceal the circumstance, if in the event of his having murdered Allum Chund, he would restore the ornaments which he had worn; but that he nevertheless stated his ignorance of the fact. From the evidence adduced, it appeared that the prosecutor did give the prisoner to understand that he would not be prosecuted, if in the event of his having murdered the deceased, he restored the property; and that the prisoner then acknowledged the fact, and produced the ornaments which had been worn by the deceased. The law officer of the Court of Circuit declared in his *futwa*, that the prisoner was convicted of the murder of Allum Chund, the prosecutor's son, and liable to suffer death by *Kissas*, in which the Circuit Judge expressed his concurrence, and consequently referred the trial for the decision of the superior Court. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the murder with which he was charged, and declared him liable to capital punishment by *Kissas*. The Court (present W. Leycester) fully concurred in the conviction; and seeing no ground whatever to render the prisoner a proper object of mercy, sentenced him to suffer death.

1821.
Sept. 7th.
Case of CHINTAMUN and others.

SHEO KULWAR,
against
CHINTAMUN and three others.
Charge---HIGHWAY ROBBERY.

The prisoners pleading that they had quarrelled with the prosecutor about *baigars*, the Court directed that an enquiry and report should be made as to the acceptation of the term.

THE prisoners Chintamun, Ramdehull, Roochee, and Dureao, were charged with highway robbery, and tried for that offence at the 2d sessions of 1820, for zillah Shahabad.

It appeared in evidence, that the prosecutor was returning from the *hauth* of Burhpore with forty pieces of cloth, which he had purchased, accompanied by several other persons, when they were attacked by six persons, who beat and robbed them of the cloth, and of ornaments to the value of seventy-five rupees.

The prosecutor declared he recognized all the robbers, and six persons named by him, were in consequence apprehended; but, as the witnesses could only identify four of the persons seized, the remaining two were released by the Magistrate. The prisoners denied the charge, and endeavoured to prove an *alibi*, in which however they completely failed. The law officer of the Court of Circuit convicted the prisoners of highway robbery, and declared them liable to discretionary punishment, in which the Judge concurred, and passed sentence accordingly: he however recommended mitigation of punishment, although he observed the only ground on which he could urge it, was that this appeared to be the first offence committed by the prisoners, and the prosecutor sustained no very serious injury. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners of highway robbery, and declared them liable to discretionary punishment by *Acoobut*. The Court (present W. Leycester) fully concurred in the conviction of the prisoners; but, taking into consideration the grounds on which the Circuit Judge recommended a mitigated punishment in their favour, sentenced them each to receive twenty-five stripes with a *corah*, and fourteen years imprisonment with hard labour. The Court observed, that the first named prisoner pleaded in his defence, that the prosecutor was actuated by enmity towards him, in consequence of his having had, in his capacity of *chokeedar* of Maharage Gunge, sundry disputes with him regarding the seizure of his dependants as *baigars* to serve passing battalions; and that the same was also pleaded by the second and third named prisoners, with exception of the object of the seizure. With reference to a late regulation on the subject, the Court desired that the Magistrate would set on foot an enquiry on this point, and report the result to the Nizamut Adawlut, particularly as to what is intended to be expressed by the term *baigar*, whether a man who is paid for his labour though pressed into service, or whose service is pressed and not paid for.

In pursuance of the above order, the acting Magistrate of Shahabad submitted to the Court a reply in the following terms. "The final sentence on the prisoners in the case referred to having been passed, there does not appear to be any use in ascertaining the truth or

1821.
Case of CHINTAMUN and others.

falsehood of that part of their defence respecting *baigars*; but being anxious to fulfil the orders of the Nizamut Adawlut, I instituted both a particular and general enquiry into the subject. My particular enquiry was couched in such terms as to prevent the concealment of the truth from interested motives; and the result is a conviction on my mind, that there was not a particle of truth in the defence set up by the convicted prisoners. As to what is intended to be expressed generally by the term *baigar*, I believe it would be difficult to furnish a precise definition. I have heard many fanciful derivations of the term. I myself thought until lately that it was derived from the Sanscrit, and used in the Hindostanee language only; but I find it in the *Boorhani Qatia*, page 171, and the following definition is given:

کار فرمودن بے مزد بود یعنے کار بفرمایند واجرت ند هند

Where service is compelled by force, it is obvious that the remuneration must depend upon gratuity. I believe that the word is used generally to express forced service, whether paid for or not; and I also believe that *baigars* are generally paid for their service, (if they chuse to wait for payment,) although perhaps not adequately; as, on such occasions, there is no regular contract of "*Do ut facias*" entered into between the parties. There is a familiar proverb among the higher classes of natives, that بیکار سے بیگار اچھا ھی implying that a precarious employment is better than total idleness. I doubt whether the justice of the saying is acknowledged by those who heretofore had practical experience of the effects of the system; but my opinion is, that no villager in this country would voluntarily act as a carrier, with the certainty even of a liberal compensation for his labour."

1821.
Sept. 11th.
KUMLAPUT's case.

GOVT.
against
KUMLAPUT.
Charge—MURDER.

Murder from jealousy. There being reason to believe, that an adulterous intercourse subsisted between the deceased and the prisoner's

KUMLAPUT was tried for the murder of Nethram, at the monthly sessions of zillah Bareilly for July, 1821. The transaction may be briefly stated in the following manner.

On the 26th of May 1821, towards evening, Kumlaput entered the house of Nethram, and gave him the usual salutation of "Ram Ram," when Nethram (who at that time was eating his meal) desired him to be seated. As soon as he had concluded his meal, and while in the act of drinking water, Kumlaput stabbed him with a large knife. Nethram, aided by one Gunga, wrested the knife from Kumlaput, threw it on the floor, and ran out of the house. Kumlaput took up the knife, and stabbed himself; but the wound was not in a vital part. At a short distance from his house, Nethram fell senseless,

1821.
KU CAPUT'S case.
wife, capital sentence, under the circumstances of the case, was commuted to imprisonment for life.

was carried home, and died in about half an hour. The neighbours having assembled, Kumlaput was secured, and on the arrival of the police officer, he confessed that the deceased had for several months past, had a criminal connection with his wife Musst. Dhurmia, in consequence of which he had committed this act. This confession he repeated before the acting joint Magistrate, but before the Court of Circuit he pleaded not guilty. The law officer of the Court of Circuit declared the prisoner convicted of the wilful murder of Nethram, and liable to *Kissas*, in which conviction the Judge of Circuit concurred; but as he thought there was reason to believe that the alleged criminal connection did exist between the deceased and Musst. Dhurmia, he recommended the case of the prisoner to the favourable consideration of the Court. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the wilful murder of Nethram, and declared him liable to capital punishment by *Kissas*. The Court (present W. Leycester) fully concurred in the conviction of the prisoner; but, agreeing with the Circuit Judge, that, under all the circumstances of the case, the prisoner was entitled to the favourable consideration of the Court, sentenced him to perpetual imprisonment in the Bareilly jail.

GOVERNMENT,
against
BHUNGEE LAL.
Charge—FORGERY.

1821.
Sept. 11th.
BHUNGEE LAL'S case.
The mohurrir of a Thana, with a view to screen himself from the charge of having deputed a Burkundaz only to enquire into a case of theft, falsified the Magistrate's record to make it appear that the Jemadar had been deputed in

THE prisoner Bhungee Lal, *Mohurrir*, was charged with forgery of a record of the Court, and his trial came on at the 1st sessions of 1821, for zillah Purneah. The circumstances of the case were as follow. The prisoner was employed as a *Mohurrir*, on the Thana establishment at Moneeharee, in the district of Purneah, and was called upon by the acting Magistrate, to account for his having deputed (in the absence of the Darogha) a Burkundaz to enquire into a case of theft, which had occurred within the limits of the Thana, instead of going himself, or sending the Jemadar of the Thana, on that duty. With a view of exculpating himself, he stated, that the Jemadar was not at the Thana at the time; and to verify this assertion, he asked the Foujdary record-keeper for leave to look at the monthly report book, which had been sent from the Thana, and filed in the Magistrate's office, and took the opportunity of its being in his possession, to write at the end of a report which had been made of an occurrence that had taken place on the same day on which the Burkundaz had been deputed, "that the Jemadar had gone to inquire into that case." This it appears was false; and it was proved that the prisoner had written the addition above alluded to, after the record had been filed in the Magistrate's office. He was in consequence committed to take his trial for forgery.

1821.

BHUNGEE LAL'S case. another case. Held that this is forgery, but of the lightest description. Sentence, six months imprisonment.

The law officer of the Court of Circuit declared in his *futwa*, that the prisoner was convicted of forgery. In this *futwa* the Circuit Judge agreed; and in conformity to section 9, clause 2 and 3, of Regulation XVII. 1817, proceeded to sentence him to imprisonment for three years; but at the same time declared his opinion, that the punishment was much more than adequate to the offence which had been committed. He therefore forwarded the case, in conformity to the Regulation above cited, for the information and orders of the superior Court. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of forgery, and declared him liable to discretionary imprisonment by *Acoobut*.

The Court (present W. Leycester) fully concurred in the conviction of the prisoner; and agreeing with the Circuit Judge, that, under all the circumstances of the case, the prisoner was equitably entitled to a mitigation in the lowest scale of punishment than could be inflicted for forgery by a Circuit Judge, sentenced him to six months imprisonment without labour.

GOVERNMENT,
against
ABDOOLLAH.
Charge—MURDER.

1821.

Sept. 21st. ABDOOLLAH'S case.

A sentence of *Kissas* or retaliation against a prisoner tried for the murder of his wife is not legally barred by suspicion of her adultery; and a law officer who had given a *futwa* to that effect advised accordingly; though in awarding sentence, proved adultery may doubtless be taken into

The prisoner Abdoollah was tried for the wilful murder of his wife and mother-in-law at the first sessions of 1821, for zillah Furruckabad.

On the night of the 12th of May 1821, a neighbour of the prisoner's heard a cry of murder, and going round to the prisoner's door, saw him make his escape, and followed after him. The prisoner was challenged by the sentry at the Madda Thanah, when going up to the Thana, he said that he was Abdoollah Butcher, and stated that he had killed his wife with a knife, because she had been unfaithful. On the Thanadar and others going to the prisoner's house, they found his wife dead from the effect of wounds; with a knife sheathed in her body, and his mother-in-law mortally wounded. The prisoner confessed the commission of these two murders; and in extenuation of the crime, he stated before the Magistrate, that his wife was an adulteress; that he detected her in the act, at twelve o'clock in the day, and therefore killed her the following night; and further, that he killed his mother-in-law, because she aided and abetted her daughter in the commission of the crime. Before the Court of Circuit also, the prisoner confessed the murders; but stated in his defence, that he caught his wife in the act of adultery, and instantly struck with a knife at her and her paramour, when the latter fled; but afterwards stated, that he did not know (having been inebriated at the time) whether he wounded his wife and mother-in-law or not. The prisoner totally failed in his attempt to prove his wife's intimacy with another man, or even to prove that she had a bad character. The *futwa* of the law officer of the Court of Circuit convicted the

1821.

ABDOOLLAH'S case.

prisoner of the murder of his wife Akeella, and mother-in-law Noor Beebee; but declared that *Kissas* was barred on the first count, (the murder of his wife,) because a doubt remained whether or not she was an adulteress; but on the second, (the murder of his mother-in-law,) sentence of *Kissas* was pronounced. In referring this case, the Judge of Circuit expressed his opinion, that the wilful murder of the two women Akeella and Noor Beebee, without any palliative, was proved against the prisoner; for that no credit could be given to his unsupported assertions on his defence, as nothing of the kind was urged either at the Thana or before the Magistrate. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the wilful murder of his wife and mother-in-law, and declared him liable to capital punishment by *Kissas*. The Court (present W. Leycester) fully concurred in the conviction of the prisoner; and seeing no circumstance in his favour to render him a proper object of mercy, passed upon him sentence of death. With reference to other points of this trial, the Court made the following observations. The Court observe, that there is some little inconsistency in the concluding paragraph of the Circuit Judge, Mr. Oldham's letter: it states his opinion, that the wilful murder "without any palliative is proved against the prisoner, for no credit can be given to the unsupported assertions on the defence, as nothing of the kind was urged either at the Thana or before the Magistrate." This observation, however, can only apply to one of the assertions in his defence, that he struck at his wife while in the actual commission of adultery, a ground of defence which, if proved, would not merely have acted as a palliative, but as a justification: neither is this the ground assumed in the *futwa* of the law officer of the provincial court as a bar to *Kissas*. On the contrary, an infinitely inferior ground is taken, as expressed in the Circuit Judge's own words, "because a doubt remains whether or not she was an adulteress." In every other respect, the assertions in the defence before the Circuit Judge, in the Foujdaree, and at the Thana, are, to all intents and purposes, the same; and it is not supposed that the Circuit Judge means to express, that if the cause assigned in all the above places (the adulterous habits of his wife) had been proved, her murder, though still a murder, would have been without any palliative. The Court further desire, that the Court of Circuit will call the attention of their law officer Moohummud Kifayut Oolla to the *futwa* of two of the law officers of this Court on the present trial, and to the *futwa* of Moohummud Saeed Oodeen, and of two of the law officers of this Court on the trial of Kumlaput for the murder of Nethram, (No. 1 of the Shajehanpore Calendar for July last*,) in which he will observe, that agreeably to the doctrines therein laid down, *Kissas* is not legally barred on the ground assumed by him, even in the case of Kumlaput, which exhibits many more grounds of suspicion against his wife than appear on the present trial.

Considération by the Nizamut Adawlut.

* Page 98.

1821.
Oct. 3d.
CHAND KHAN'S case.

GOVERNMENT,
against
CHAND KHAN.

Charge—MURDER.

A Burkundaz convicted of murdering his pregnant wife, by sword and spear wounds. Sentenced to be hanged.

THE prisoner Chand Khan was tried for the murder of his wife, at the 2d sessions of 1821, for zillah Cawnpore. Chootoo Chokeedar was making his rounds in the village of Ghatumpore, after midnight, on the 23d of February, 1821, when approaching the house of Chand Khan Burkundaz, he heard the women calling out, and finding the door open, he went in, and there saw Chand Khan's wife lying wounded on a *charpai*, and one of her hands cut off, lying on the ground. The women of the house told him, that Chand Khan had wounded his wife, and fled. Information having been instantly given to the Jemadar of the *chokee*, close at hand, and of which Chand Khan was a Burkundaz, the Jemadar immediately went to the house, and sent Burkundazes in quest of Chand Khan. On entering the house, he found Chand Beebee mortally wounded, one hand being cut off, and her bowels protruded through a spear wound made in her belly. She had also another wound on her back. Being questioned, she stated, that her husband Chand Khan had ordered her to open the door at eleven o'clock at night, to admit of his going to the Thana; that she first replied by telling him to open it himself, but afterwards went, and whilst stooping down to unfasten it, received the spear wound in her belly; that she then attempted to escape into the house, but was severely wounded on the back, the head of the spear remaining in the wound, on which Chand Khan drew his sword, and striking at her, cut her hand off. The spear, as also the sword, with the blade broken in half, was found on the ground within the house, stained with blood. Chand Beebee lived only one day after receiving the wounds: she was with child, and had nearly gone her full time. Musst. Roopun, a connection, who slept in a different part of the house, stated in evidence, that Chand Khan came home about seven o'clock on the night of the occurrence; that she left him smoking at the door, and retired to rest; that being awakened during the night by cries, she got up, and found Chand Beebee wounded, who said that her husband had wounded her, and fled. Chand Khan being apprehended at Lucknow, on the 22d of April, nearly two months after the murder, denied the charge, and stated that when he left his house, his wife Chand Beebee was perfectly well: he admitted that he left his post without leave, to go on a pilgrimage to Baraitch; and said that he left his badge, &c. at home, but denied that the broken sword and spear produced in Court belonged to him. These articles were, however, fully identified as belonging to the prisoner. The law officer of the Court of Circuit declared the prisoner Chand Khan convicted on violent presumption of the wilful murder of his wife Chand Beebee, and liable to severe punishment extending to death by *Seasut*. The Judge of Circuit concurred with

1821.
CHAND KHAN'S case.

his law officer in the conviction of the prisoner, and was not aware of any circumstance that could be urged in mitigation of punishment. The prisoner was convicted on strong presumption by the *futwa* of two of the law officers of the Nizamut Adawlut of the wilful murder of his wife, and declared liable to suffer death by *Seasut*; and the Court (present S. T. Goad and J. Shakespear) concurring in the *futwa*, and seeing no circumstances in his favour to render the prisoner a proper object of mercy, sentenced him to suffer death.

1821.
Oct. 31st.
JOWAHIR'S case.

GOVERNMENT,
against
JOWAHIR.
Charge—MURDER.

A Sepoy convicted of murdering a Havildar of his corps in prosecution of theft. Sentenced to be hanged.

THE prisoner Jowahir was arraigned for the murder of Heeramun, and brought to trial for that offence at the 2d sessions of 1821, for zillah Cawnpore.

At 12 o'clock on the night of the 13th of May 1821, some sepoys of the 1st Battalion 1st Regiment Native Infantry heard Heeramun, Havildar in the 4th company, call out, "Thieves." Bhyroodeen sepoy was the first to reach his hut, and instantly held the *tattee* close to prevent the escape of any thief who might be in the hut. Other sepoys then came up, when Heeramun from within said that the thief had wounded him, on which the *tattee* was put a little on one side, and Heeramun was helped out of the hut, having a dagger in one hand, and covering with the other hand a wound in his belly. A light being brought, several sepoys entered the hut, and the prisoner was found hid under the Havildar's *charpai*, having no other clothes on but his *dhoty*. Heeramun Havildar, on being laid on a *charpai*, told one of the sepoys to loosen his purse from his waistband, in which was the sum of fifty-one rupees; saying, that that money had caused his death. Being taken to the hospital, (where he died from the effects of the wound, after lingering a day and a night,) he said, that he was awakened from his sleep by some person attempting to force away his purse, which was entwined in his waistband; and upon his resisting, the thief struck him in the belly with the dagger, which he seized hold of, calling out "Thieves."

The prisoner denied having wounded Heeramun, and stated, that he went to his hut by appointment, and that the Havildar wounded himself, not having been able to effect his unnatural intention on the person of the prisoner. The prisoner also denied that the dagger belonged to him. The clothes of the prisoner, consisting of a *Mirzai* and *Ungurka*, were found under the *charpai*, the right arm and right breast being stained with blood. The dagger also was stained with blood. One witness deposed to having seen the dagger in the possession of the prisoner, prior to the night on which the murder was committed. The prisoner was one of the strongest

1821. JOWAHIR'S case.

...men in the battalion, and the deceased was old and infirm. The law officer of the Court of Circuit convicted the prisoner Jowahir of the murder of Heeramun Havildar, on violent presumption, and declared him liable to suffer death by *Seasut*. The Judge of Circuit fully concurred in the *futwa* of his law officer; and, in referring the case, declared that he was not aware of any circumstance that could be urged in mitigation of punishment; adding, that should sentence of death be passed upon the prisoner, it might be expedient for the sake of example, that he should be hanged in front of the battalion to which he belonged.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the wilful murder of Heeramun Havildar, and declared him liable to discretionary punishment by *Seasut*, extending to death; and the Court of Nizamut Adawlut (present S. T. Goad and W. Dorin) concurring in the conviction, and seeing no circumstances in favour of the prisoner to render him a proper object of mercy, sentenced him to suffer death.

1821. Oct. 31st. JEORA KHUN'S case.

PAIM,
against
JEORAKHUN.

Charge—MURDER.

In a case of confession of murder, and a corpse being found, admitted by the prisoner to be that of the person murdered, the Court did not deem the absence of proof as to its identity to be sufficient to bar a capital sentence.

THIS prisoner was brought to trial on the above mentioned charge, at the 2d sessions of 1821, for zillah Cawnpore.

The prosecutor Paim sent some sweetmeats by the village barber to his daughter, who was married, and settled at the village of Raootpore, a few coss from her father's village. The barber came running back to the prosecutor, and told him that his relation Jeorakhun had called for the young woman, four or five days before; stating that he had been sent to fetch her by her father, in order that she should be present at the celebration of some festival at the village of Joohee, and that the girl's mother-in-law had suffered her to go with him. The prosecutor, on hearing this, became alarmed, and immediately set off for the village of Joohee. In the mean time the Thanadar of Colonelgunge had reported to the Magistrate, that the corpse of a Hindoo woman had been found half devoured by the wolves, which no one recognized. The prosecutor having arrived at Joohee, found the prisoner at home, and instantly asked him if he had not brought his daughter away from Raootpore. The prisoner denied having done so, on which the prosecutor said that he had lost his daughter, and that it was fit that the prisoner should assist him in searching for her. They proceeded to Raootpore, when the prisoner being confronted by Juggurnaut (the girl's husband) and one Toolsee, admitted that he did bring the girl away from Raootpore; but stated that he lost her on the road. The prosecutor then, under pretence of getting the assistance of Baicha Loll, got the prisoner to

1821.

JEORAKHUN'S case.

accompany him to Mouzapoor, where there is a police *chokee*, and at that place caused him to be apprehended by the Jemadar of the *chokee*. The prisoner being repeatedly urged to tell what he had done with the girl, at last acknowledged before the Jemadar, the prosecutor, and others, that he had killed her near Noubusta, and that her corpse had been found by the Thanadar, and thrown into the river. He further stated, that he had buried her jewels in a field near his house. When the party returned to Joohee, he was permitted to enter his house, and immediately brought forth a part of the jewels, saying he had no more. Search however being made, the remainder were found hid in some loose earth. When taken to the Thana, the prisoner implicated the prosecutor, (the father of the girl,) and stated, that Paim, being aware of his daughter's dishonour, had employed him to bring her from the house of her mother-in-law, for which purpose he had furnished the prisoner with a note authorizing his receiving the young woman; and further, that Paim accompanied him, but remained outside of the village Raootpore; that having reached Noubusta, during the night, Paim struck his daughter with a club, and the prisoner, taking the club out of his hands, killed her by repeated blows; and then, taking her ornaments, he carried them at Paim's request to his own house. Before the Magistrate, the prisoner stated, that Paim killed his own daughter on the road, and gave him some of the girl's ornaments as hush money, which ornaments he had returned to Paim when the Jemadar came to search his house; further, that the remaining ornaments must have been thrown into his house by Paim. The corpse found by the Thanadar was that of a young Hindoo woman; but at the time of its discovery, it was in such a state of decomposition, that it could not have been recognized. The law officer of the Court of Circuit convicted the prisoner Jeorakhun of the murder of the girl Raisee, on his own proved confession at the Thana, combined with the circumstances of the case; but declared that *Kissas* was barred by reason of the prisoner's having stated that Paim, the father of the deceased, was his associate in the commission of that crime. He however declared the prisoner subject by *Seasut* to the severest punishment, extending to death. The Judge of Circuit fully agreed with his law officer in convicting the prisoner Jeorakhun of the murder of Musst. Raisee. He also concurred with him in opinion, that the murder was perpetrated for the purpose of obtaining her jewels, with the value of which the prisoner, being a relation, was acquainted. This crime, he observed, appeared to have been of the most deliberate nature; and he was not aware of any circumstance that could be urged in the prisoner's favour for a mitigation of punishment.

The third Judge of the Nizamut Adawlut (S. T. Goad) concurred in the *futwa* of the law officers of the Nizamut Adawlut, which was similar in purport to that of the Court below, and he was of opinion that the prisoner should suffer death. Although from the state in which the body was found, and none of the relations coming forward, it could not be identified, he observed, that he had no doubt, from the prisoner's own admission, that the body found was that of

1821. JEORA-KHUN'S case. Raisee; and that in cases of confessions, when the body of a murdered person is forthcoming, the proof of its identity is not essential. Being joined in this opinion by the 4th Judge, (J. Shakespear,) sentence of death was passed accordingly.

1821. Nov. 1st. PHEKOO KHAN'S case.

GOVERNMENT,
against
PHEKOO KHAN.
Charge—MURDER.

Charge of murder by a blow with a *Koolharee*. It appearing that the deceased had been educated by the prisoner, to whom he was not related, and that the blow was struck on sudden provocation, without any premeditation or malice, sentence restricted to twelve months imprisonment.

THE trial of the prisoner Phekoo Khan came on at the Benares city sessions for August 1821.

It appeared in evidence, that the prisoner Phekoo Khan, having lost his wife, took the mother of Imaum Bukhsh, (the deceased,) then a widow, to live with him. She brought her son, then an infant, with her; and he was from that period till he grew into manhood, treated in all respects by the prisoner as if he had been his own child. On the day of the catastrophe, some words arose between the prisoner and the deceased respecting the extravagance or idleness of the latter, who, as they quitted the house in which the altercation commenced, was heard to make some insulting reflection upon the prisoner. The latter (who on his trial asserted he was intoxicated at the time) had a *koolharee* in his hand, and with this he struck the deceased, and fractured his scull. He died the eighth day after, and as the charge presumed, from the wound thus given by the prisoner. The *futwa*, however, of the law officer of the Court of Circuit declared *Kissas* and *Deeut* to be barred, and the prisoner liable to punishment by *Seasut* only, in consequence of the uncertainty which existed as to the cause of the deceased's death. In referring the case for the consideration of the Nizamut Adawlut, the Judge of Circuit observed: "The *futwa* is such as I venture to take advantage of, by recommending the prisoner to the Court's favourable consideration. The act was certainly from the impulse of the moment, and had no origin in malice or forethought: and the conduct of the prisoner for many years towards the deceased, would appear to have been marked with all the care and kindness of a parent. I have no desire to excite any improper bias when I add, that the meekness and resignation of the unhappy man while under trial evinced a disposition quite at variance with the premeditated perpetration of the act which placed him there." The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having inflicted a severe wound on the head of Imaum Buksh, with a *koolharee*, of the effects of which there was strong presumption that he died a week after; but stated that *Kissas* and *Deeut* were barred, from Imaum Bukhsh having prior to his death, expressed his unwillingness to prosecute; and declared him liable to discretionary punishment by

Seasut. The Court (present W. Leycester) fully concurred in the conviction of the prisoner; but considering the blow to have been struck under the impulse of sudden provocation, and in the absence of all premeditated malice, sentenced him to twelve months imprisonment.

1821.
PHEKOO KHAN'S case.

HINDOO SINGH,
against
THAN SINGH.
Charge—MURDER.

1821.
Nov. 10th.
THAN SINGH'S case.

The prisoner having been struck by the deceased with a club, went home (a short distance) for his sword, and meeting with the deceased, who was returning home, killed him with the sword. Held that this was culpable homicide, and punished by five years imprisonment.

THE prisoner was arraigned on a charge of murder, and tried for that offence at the 1st sessions of 1821, for zillah Cawnpore. The transaction which led to this trial was in substance as follows. Information was brought to the deceased, (Ooree Singh,) that Than Singh had taken cattle to plough a field which Ooree Singh had forbidden him to do; on which Ooree Singh, taking his sword, was on the point of going to prevent him; but the prosecutor, (who was his nephew,) fearing some mischief, took the sword from him, and tried to prevent his going. Ooree Singh, however, took his club, and going to the field, struck Than Singh, who immediately went home, (a distance variously stated at from four to eight or ten fields,) and getting his sword, met Ooree Singh on his return from the field, and killed him. The evidence against the prisoner consisted of his own confessions, added to the circumstance of having been observed by two witnesses with a drawn sword in his hand, hastening from his house. In his confession before the Thanadar, the prisoner had stated, that meeting with Ooree Singh, who was returning from the fields, that individual struck him on the knee, on receiving which blow, he attacked him with his sword; but in his confession before the Magistrate, he made no mention of this second attack made upon him by Ooree Singh. Before the Court of Circuit, the prisoner deposed, that he did not know whether or not he killed Ooree Singh, when that person struck him two blows in the field. The law officer of the Court of Circuit convicted the prisoner Than Singh of the wilful murder of Ooree Singh, recording his opinion, that the assertion of the prisoner, in his confession at the Thana, of having wounded the deceased in self-defence, was not entitled to credit, and declared him liable to suffer death by *Kissas*. The Judge of Circuit concurred with his law officer in the conviction of the prisoner; but under all the circumstances of the case, the admission by the prosecutor that his uncle first of all took up his sword, and, after that had been taken from him, took his club and went to prevent the prisoner's ploughing the field, added to the deposition of Durreao Singh, Girrund Singh and Gunga Singh, who stated that they saw the deceased strike the prisoner twice with a club, he declared his opinion, that much might be urged in extenuation, notwithstanding the time and place when

1821.
THAN SING'S case.

and where the provocation was given differed from the time and place when and where the homicide was committed. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the wilful murder of Ooree Singh, and declared him liable to capital punishment. The Court, however, (present W. Leycester and J. Shakespear,) under all the circumstances of the case, considered it as one of culpable homicide only, and sentenced the prisoner to imprisonment for five years.

1821.
Nov. 15th.
Case of BUKHTEAR and others.

MUNNOO,
against
BUKHTEAR and two others.

Charge—KIDNAPPING A BOY FOR THE PURPOSE OF SACRIFICE.

Three prisoners, inhabitants of the Jeyntea territory, convicted of having, at the instigation of the brother-in-law of the king of that country, forcibly seized a boy in the British territory for the purpose of offering him up as a sacrifice to the Hindoo idol *Kalee*. Sentenced to 14 years imprisonment with labour in banishment.

THIS trial came on at the 2d sessions of 1821, for zillah Sylhet. The prisoners Bukhtear, Ghazee, and Ruheem were charged with kidnapping Munnoo, a boy of 15 years of age, a British subject, for the purpose of offering him up as a human sacrifice at Jeyntea.

On the 9th of April, 1821, the three prisoners were seized in the act of carrying off the prosecutor, a lad of fifteen, whom they attempted to gag, being provided with instruments for that purpose. The boy's cries brought the people of the village to his rescue, and the three *khojgurs* were secured, and brought to the Magistrate the next day, when they made a full and free confession. This transaction took place at Teleekal, a small village about 12 miles from Sylhet, close to the Jeyntea frontier. The prosecutor was herding cattle, and had no ornaments or clothes which might induce the men to carry him off for the purpose of robbery.

The following was the substance of Bukhtear's confessions. "My name is Bukhtear, my father's name Sheikh Jaun. I am an inhabitant of Bhurkhal, in the Jeyntea territory. I am about thirty years old, and by profession a cultivator. Oochung Rungaut Kooar, the brother-in-law of Ram Singh, Rajah of Jeyntea, sent us three prisoners to seize a man for the purpose of offering him up as a sacrifice at the shrine of the goddess *Kalee*. We therefore, that is to say, I, Ghazee, and Ruheem, seized the prosecutor Munnoo; but he screamed out for assistance, when the people of the village assembled, and apprehended us. I do not know whether the Kooar sent any other persons on the same expedition. I never before seized any other individual. We are the Kooar's subjects, and dare not disobey his orders; but we have no hope of remuneration from him. It was our intention to gag our victim with the balls of cloth produced in Court. Rajah Ram Singh is not acquainted with the fact of our seizing men. I have witnessed human sacrifices. The Kooar offers them up every year. I am not aware to what country the individuals belonged who were sacrificed last year. The Kooar has offered up human sacrifices for the last ten years, ever since he married the Rajah's sister.

I cannot say exactly how many victims are offered up annually; but the sacrifices continue for four months, from the month of Magh to the month of Bysakh. They are offered up to *Kalee* and *Doorga Thakoorain*. The sacrifice is performed in secrecy. The victim is made to sit down, and after being adorned with a garland of flowers, the throat is severed with a sacrificial knife. The Kooar did not desire us to seize individuals belonging to any particular country, but to make seizures in the country of the Company, in Cachar, or any where else where opportunity offered. The Rajah of Jeyntea is extremely displeased at the practice, and has forbidden it in his dominions on pain of death. The Raja lives in the same dwelling with the Kooar, but in different apartments. I have heard, though I never saw it, that the wife of the Kooar bathes in the blood of the victims. She is always present at the sacrifices. The rite is performed with a view to procure pregnancy. here are many other persons deputed as *khojgurs* or kidnappers, whose names I do not know, but my party consisted only of Ghazee and Ruheem. We were desired to seize only one individual. These balls of cloth were given us by the Kooar. There is no particular time for performing the sacrifice; sometimes it takes place in the day, and sometimes in the night time, but always in secrecy. I do not know when Munnoo would have been sacrificed, had we succeeded in carrying him to the Kooar." The confessions of the other two prisoners were in substance the same as that of the above named. In referring this trial for the orders of the Nizamut Adawlut, the Judge of Circuit accompanied it by the following observations.

"This atrocious practice, however, on the part of the people of Jeyntea, although rumoured and credited, was never before so clearly ascertained by facts. The emphatic appellation of "*khojgur*" is generally known in this district; and though persons have been, at various periods, missing on the borders, yet their disappearance has been commonly attributed to destruction by wild beasts, with which the jungles in that direction are infested, and which rendered the belief probable; but the instances of people having been actually seized, and carried off to Jeyntea from this district, I have just reason to suspect, from the result of my enquiries, must have been rare, and very few, during these 30 years past; since the emissaries of the Jeyntea Rajah would have found it, at all times, more easy and practicable to secure an inhabitant of Cachar, which adjoins Jeyntea, for the above horrid purpose, and with less risk of detection and punishment; and I make no doubt, but that the miserable beings, who are stated in the prisoner Bukhtear's confession especially, to have fallen victims, were inhabitants of Cachar, and not of this district. At the present juncture, when the Munnypooreans, after expelling the Rajah, have taken possession of Cachar, and are, comparatively speaking, regarded as a much more powerful and warlike people than the late Rajah's subjects, the emissaries of Jeyntea may have been deterred, I suspect, from making any attempt to seize a victim from that country, where they were likely on detection to be immediately put to death without any trial, and

1821. Case of BUKHTEAR and others. preferred making the experiment in this district, and I cannot but rejoice at their failure. By clause 7th, section 2d, of Regulation LIII. 1803, the Courts of Circuit are restricted in cases not specifically provided for, from passing a final sentence exceeding corporal punishment of 39 stripes, and imprisonment with hard labour for the term of 7 years; and if, in any instance, the above stated punishment appear insufficient, the Judge of Circuit is to refer the trial to the Nizamut Adawlut. The present extraordinary case appears to me to fall under the above provision, as I do not think the term of imprisonment of 7 years adequate to the heinousness of the crime with which the prisoners have been charged, and of which they have been convicted, and who can be considered in no other light than as accessaries and instruments in a premeditated murder: the punishment, therefore, (having the prevention of similar attempts in view, which, from the contiguity of the two countries, and the jungly state of the borders, must at all times be difficult to frustrate,) should be as severe, including banishment from the district, as our existing laws will warrant, short of death, and imprisonment for life. Any imprisonment for a few years in the jail of this district, whence they could always preserve a communication with their families in Jeyntea, and be ultimately remunerated by the Rajah, or their late employers, would not tend, in my humble judgment, to answer the intended end. Although the Rajah of Jeyntea and his family have positively disavowed the aggression, on a spirited and just remonstrance being made through the channel of the Magistrate by Government, yet there can be no doubt, from all the circumstances of the case, that the prisoners had been employed and authorized by Oochung Rungaut Kooar, and Jeyntea Kooar, the son-in-law and daughter of the present Rajah, to seize some individual, for immolation, whereever to be found, though not expressly an inhabitant of this district."

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners Bukhtear, Ghazee, and Ruheem, inhabitants of the foreign territory bordering on Sylhet, of the forcible seizure and kidnapping of Munnoo, a subject of the British government, for the purpose of his being either emasculated, or offered as a human sacrifice, by their employer, a relative of the Raja of that territory, and declared them liable to such discretionary punishment by *Acoobut*, as may be a warning to others. The Court of Nizamut Adawlut (present J. Shakespear and W. Dorin) concurred in the conviction of the above prisoners, and considered the object to have been a human sacrifice to the Hindoo idol *Kalee*. The Court sentenced each of the prisoners to be imprisoned with hard labour in banishment to the jail at Allipore, for 14 years*.

* The following was the remonstrance made by Government on this occasion. That the facts of the atrocious attempt made by persons employed under the orders of the Rajah's sister and her husband Oochung Rungaut Kooar, to carry away from the British territories a subject of the British Government, in order that he might be put to death for the accomplishment of the object described, have been submitted to Government. That the Governor General in Council has considered the atrocious outrage which has been thus committed to de-

1821.
Nov. 24th.
Case of ROBERT FREDERICK CHARLES MANDEVILLE, *alias* ROBERT FRAZER, *alias* FERGUSSON.

GOVERNMENT,
against
ROBERT FREDERICK CHARLES MANDEVILLE, *alias* ROBERT FRAZER, *alias* FERGUSSON.

Charge—FORGERY.

A person born in wedlock at Madras, his father being a German, and his mother a Scotch woman, declared by the advocate general to be a British subject, and amenable only to the Supreme Court; but ruled that the *onus probandi* as to his birth rests on the prisoner.

THE prisoner above named was charged with forgery, and tried for that offence at the 2d sessions of 1820, for zillah Shahabad. The circumstances attending this forgery were as follow. It appeared that the prisoner was for a short time employed as a writer, under the name of Robert Frazer, in the office of the Collector of zillah Juanpore; and that he obtained leave from that gentleman to go to Monghyr, to answer a charge preferred against him before the joint Magistrate at that station. On his way down the river, he stopped at Buxar, on or about the 25th of August, 1820, and introduced himself to one Serjeant Jackson, with whom he had some conversation, and agreed to purchase from him some silver articles, &c. to the value of 2,911-9, and offered a draft purporting to be drawn by Mr. Mainwaring, the Collector of Juanpore, in his favour on the Collector of Benares, for 4,700 rupees, which however the Serjeant refused to receive. On this the prisoner went to Mr. Baker, the Assistant Garrison Surgeon, (who had prescribed for a servant of his who was sick,) and requested him to get the draft cashed, to pay Serjeant Jackson the amount due to him, and keep the balance until his return from Monghyr. Mr. Baker agreed to the proposition, having no suspicion that the draft was forged; and Serjeant Jackson being satisfied with that gentleman's agreement to pay him, delivered the articles to the prisoner. Soon after this, Mr. Baker forwarded the draft to the Collector of Benares, and requested an order on the Collector of Ghazeepoor for the amount, which was granted, and he received the cash about the 13th of September: the sum due to the Serjeant was paid to him on the 15th, and the balance remained in the treasury of the commanding officer, to be paid to the prisoner on his return from Monghyr: but on the draft being discovered to be a forgery, the balance in the treasury of the commanding officer of Buxar was returned to the Collector of Ghazeepore. In the mean time, the prisoner had continued his journey to Monghyr, from whence, after settling with the native who had complain-

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mand the prompt interposition of the British government. That the Magistrate has, in consequence, been ordered distinctly to apprise the Rajah, of the indignation felt by the British government; and to inform him, that if another instance shall hereafter occur of a British subject being kidnapped for similar purposes, His Lordship in Council will immediately demand the surrender of the individuals at whose instigation the crime may have been committed, and that on proof of their having been the instigators of the attempt, such individuals, however high in rank, will be publicly put to death. That if the demand so made for the surrender of the individuals in question be not complied with, the Governor General in Council will consider the Rajah as having taken the guilt of the crimes upon himself, and will proceed against him accordingly.

1821.

Case of ROBERT FREDERICK CHARLES MANDEVILLE, *alias* ROBERT FRAZER, *alias* FERGUSSON.

ed against him, he, instead of returning to Juanpoor, proceeded to Dacca. Here he took the name of Mandeville, and under that name wrote to Mr. Baker for the balance of the draft, which he said had been made over to him by Robert Frazer, from whom he enclosed a letter and order, authorizing Mr. Baker to pay the amount into his hands. Several circumstances gave grounds to suspect that Mandeville and Frazer were the same person, and the prisoner was in consequence apprehended by the Magistrate of Dacca, before whom he insisted that his name was Mandeville, but admitted having sent a draft to Mr. Baker, at Buxar, which he said he received from Mr. Frazer in Calcutta; but his statement being unsatisfactory, he was forwarded to Juanpore. On being examined by Mr. Cracroft, the Magistrate there, he denied having made over the draft on the Collector of Benares to Mr. Baker, or having presented it to Serjeant Jackson. He admitted, however, having purchased some silver articles from the latter, for which he said he had paid cash, but said he did not recollect the amount, as he had left the receipt at Dacca: he moreover acknowledged the body of the draft was in his handwriting, but not the signature of T. Mainwaring. His further statement before the Magistrate of Juanpore, was contradictory and unsatisfactory. The prisoner, when interrogated before the acting Magistrate of the district of Shahabad, contradicted in a great measure his former statement, and said he had got the draft from a Mr. Curran, the Registrar in the Collector's office of Juanpore, (who had since died,) and who he stated procured the Collector's signature. He admitted also having made the draft payable to Mr. Baker, and said that Frazer was an assumed name, and that his real name was Mandeville. The only witnesses for the prosecution were Mr. Baker and Serjeant Jackson, who both swore that the prisoner was the person who, under the name of Richard Frazer, purchased the silver articles at Buxar, and made over the forged draft to Mr. Baker. Mr. Mainwaring was not in attendance before the Court of Circuit; but his deposition before the Magistrate of Juanpore was filed in the case, in which, although he did not speak so positively to the signature on the draft being a forgery as might be expected, yet, from the peculiarity in the form of the letter "*r*" in the forged document, as pointed out by Mr. Baker, and by comparing it with the signature which Mr. Mainwaring affixed to his deposition, the Judge of Circuit thought that it certainly was a forgery. The authenticity of the draft was, however, rendered still more questionable from its being dated on a Sunday, when no business is usually transacted, and by the prisoner's own acknowledgment that it was his duty to register the draft, which he did as No. 40, whereas the draft registered as No. 40, in the Collector's book, appeared to have been for a different amount, and sent to Lucknow. Indeed the prisoner having immediately proceeded to Dacca, after disposing of the draft at Buxar, his having there changed his name, and endeavoured to obtain the balance in Mr. Baker's hands, by assuming a different name, clearly showed that he was all along fully aware that the draft was fictitious. On his trial, the prisoner admitted the greater

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part of the statements given by him before the Magistrate of Dacca, Juanpore, and Shahabad, and called no witnesses in his defence, nor was what he urged as such entitled to any credit, after the contradictory accounts he had given of himself. The law officer of the Court of Circuit convicted the prisoner on strong presumption of having uttered a forged draft, knowing it to be such, and declared him liable to discretionary punishment. It appeared to the Judge of Circuit, that if the draft was a forgery, of which he thought there could be but little doubt, the presumption that the prisoner forged the draft himself was as strong as that he uttered it, knowing it to be such; more particularly as he admitted having written the body of the draft, (to keep by him as a form, as he said,) and was unable to give any satisfactory account of how he procured the signature. It was true, the Judge of Circuit added, that the prisoner had latterly stated that Mr. Curran procured Mr. Mainwaring's signature to the draft; but the story was not entitled to credit, as he did not mention the circumstance till after that person's death, which happened some months subsequent to his examination before the Magistrate of Juanpore. As, for these reasons, he differed in opinion in some degree with the law officer, and with reference to the doubt which existed respecting the birth of the prisoner, the Judge of Circuit submitted the case for the consideration of the superior Court. He observed, at the same time, that there were one or two other charges of swindling against the prisoner, for which of course he might have been brought to trial, had the evidence in this case been insufficient to convict him. The doubt as to the jurisdiction above alluded to originated in the following manner. The prisoner stated, that his real name was Mandeville; that his father was a German, married to his mother, who was a Scotchwoman, and that he was born at Madras; but that he could adduce no proof respecting his birth, as his friends were dead. It appeared to the Judge of Circuit, from his accent, that he was probably of French or German origin; but he could not say that he had the appearance of being descended from a native of India, either by his father's or mother's side. In the first instance, the prisoner objected to be tried by the country courts, and a reference on the subject was in consequence made by order of the Governor General in Council to the Advocate General, who gave it as his opinion, that, if the account given by the prisoner of his birth were true, he must be considered a British subject, and amenable to the jurisdiction of the Supreme Court; but he doubted the truth of the statement, and thought it might be fabricated by the prisoner to avoid the jurisdiction of the country courts. In reply to a letter from the Nizamut Adawlut, requesting to be informed of the grounds of his opinion, contained in his letter to the Chief Secretary, dated 19th February, that "Mandeville, if it were true that his father was a German, his mother a Scotchwoman, and that he was born at Madras, must be considered a British subject amenable to the jurisdiction of the supreme Court, he wrote as follows."

"The grounds of my opinion, as far as I can recollect, and with reference to all the facts then before me, are, that the description of

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persons called British subjects in the acts and charters relative to the administration of justice in India is used in contradistinction to the native inhabitants of the country; and from the facts stated, Mandeville was clearly not a native inhabitant, or born of native inhabitants, but that he was, in point of law, a British subject to all intents and purposes. Had Mandeville been born at London or Edinburgh of the same parents, there could not have been a doubt on the question; and had he afterwards come to India, he must have been tried as a British subject: but I conceive, being born of parents, one of whom was a natural born subject, the other a person at least owing a local and temporary allegiance to the king, and at a place governed by the English law, and subject to the undoubted sovereignty of the crown of Great Britain, and consequently within allegiance to his Majesty, this person is legally as much a British subject as if he had been born in the United Kingdom. Had he been born of an alien father in foreign parts out of the king's allegiance, and with another allegiance attaching upon him, the legal consequence would have been different. That the father of Mandeville would have been amenable to the country courts may be admitted, but it does not appear to me at all to affect the argument. British subjects were rendered amenable to the king's Courts exclusively; all other persons residing within the jurisdiction are amenable to the local courts, upon general principles. It makes no difference that Mandeville's father, being an alien, would have been amenable, as he certainly would have been amenable, to the jurisdiction of the country courts, as the law has been held to be in this country. He would have been equally amenable to those courts, had his son been born at London; and if he himself, still being an alien, had come to India after such birth. The son, however, would have been to all intents and purposes a British subject, and must have been tried here as a British subject. It is clear, therefore, that the son may have privileges not possessed by the father, and that the rights of the father are not the measure for those of the son. I do not think this question, however, depends much upon the general principles which by the law of England determine who are British subjects, or subjects of the crown of Great Britain, and who not; but must be decided with a constant view to the act of Parliament and charters before referred to; particularly the 13 Geo. III. c. 63, and the charter of 1774, the 21 Geo. III. c. 70, the 26 Geo. III. c. 57, the 33 Geo. III. c. 52, (See S. 677.) The general law on the subject will be found in 1 Blackstone 366, and the common Digests and Abridgments *voce alien*. It appeared to me, that there was great suspicion of the truth of Mandeville's story, and that he wished to baffle both jurisdictions if he could; but I still think, that if the circumstances above stated be true, Mandeville, in point of law, is a British subject, and a person not amenable to the country courts for the offence in question. The question, however, may be thought not free from difficulty and doubt, particularly considering the principles which appear in some cases to have prevailed in the king's courts at the different presidencies, on questions of jurisdiction; a subject indeed, which under the change of circumstances since the

establishment of the Supreme Court requires the attention of the legislature."

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With reference to this opinion, and all the circumstances of the case, the Governor General in Council directed that the prisoner should be committed by the Magistrate of Shahâbad, (within whose jurisdiction the successful uttering of the forgery took place,) to stand his trial before the Court of Circuit, in the event of his being unable to establish the fact of his being a British subject, which, as the sequel proved, he was unable to do.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicted the prisoner of having issued a forged note, knowing it to be forged, and declared him liable to discretionary punishment by *Acoobut* for the offence.

By the Court. W. Leycester, (Chief Judge.) "The grounds of the Advocate General's opinion touching this question of jurisdiction involve consequences which he has not entered into, and which are of infinitely greater importance than any question regarding Mandeville.

"1st. Are we to understand, that the Advocate General would be of the same opinion, if Mandeville had stated himself to have been born of the same parents, say at Mysore or at Moorshedabad, or that he would limit his opinion to the asserted fact of his having been born, as we should say, in Calcutta, within the Mahratta Ditch.

"2d. As the same arguments exactly fit, would he extend his opinion to the offspring of all other aliens, Portuguese, Armenians, Chinese, Cashmerians, Mugs, and the subjects of Lucknow, who fill half the ranks of our army, born whether in Calcutta or Moorshedabad.

"3d. If a foreigner's son become a British subject, and therefore amenable solely to the King's Courts, by being born whether in Calcutta or Moorshedabad, it seems absolutely impossible to imagine any reason why the same doctrine would not apply to all Hindoos and Mahomedans, whether born in Calcutta or in the Provinces, according as the first head be answered.

"If the doctrine apply to the persons alluded to, under the 2d head, there are uncounted thousands residing in the Provinces, though not amenable to the country courts, against whom however thousands of judgments have been passed; and if applicable to those under the 3d head, as born in Calcutta, the number of privileged persons and iniquitous judgments against them would be quintupled; and if extended to all born in the Provinces, we are a lamentable assembly of Judges without any one to judge.

"With regard to Mandeville's story being true or false, I apprehend that the prosecutor must shew to our satisfaction that we have jurisdiction before we can judge.

"Under this doctrine, and taking the Circuit Judge's presumption, viz. that he is probably of French or German origin, we have no jurisdiction, for the origin of the mother would not alter the question.

"I cannot but have much doubt, however, in the soundness of a doctrine which leads to so many absurdities.

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"Independent of those enumerated, it leads to the following, that the said Mandeville is and always has been liable to all the penalties of a British subject, resident in India without licence from the Honourable the Court of Directors; that the ground on which his residence stands or stood, and any land he may have bought without sanction of Government, is and always has been liable to confiscation; and that he has all his life been liable to be sent to England as a British subject resident in India without a license; that the offspring of all other foreigners born here are not only liable to all the same unlooked for penalties, confiscations, and deportations, but that they actually ought to be abstracted from the interior of the country on account of their vast numbers, under the present constitution of India, and sent to England as illegal and intrusive sojourners in the east, who in the face of the legislature of Great Britain, have dared to colonize in all the provinces of India.

"With reference to the case requiring the interference of the legislature of Great Britain, as stated at the conclusion of the Advocate General's letter, I suppose we may in the end as well address Government with a view, 1st to that object, and 2d, to have the case argued by permission before the Supreme Court, as a possible case to occur; for we cannot well rest satisfied with the Advocate General's opinion: but in the first place, I think, we should ask the Advocate General's opinion on the 1st and 2d heads, and how the consequence involved in the 3d is reasonably avoidable; for there is no use in arguing on presumptions when they can be made certainties."

C. Smith, (second Judge.) "I do not perceive any use in further pushing the question of jurisdiction. The Advocate General doubts the facts upon which the prisoner maintains that he is not amenable. Government directed him to be tried at Shahabad, if unable to prove the fact of his being a British subject; and the Judge of Circuit states, that he can adduce no proof of that fact. The more advisable course seems to me to be, that we consider the *onus probandi* to rest upon the prisoner, regard him as unable to prove his objections to the jurisdiction, and decide his case, as we would one in which the prisoner's liability was beyond all question."

S. T. Goad, (third Judge.) "The prisoner Mandeville, having set up a plea to the jurisdiction, I am of opinion, that judgment cannot be passed against him, until the jurisdiction has been established. The *onus* of proof of jurisdiction rests, I believe, always upon the prosecutor, and not upon the prisoner. For this reason, I concur in the proposition of the senior Judge, for referring the matter to Government, with a view of having the question settled by a decision of the Supreme Court, on a case to be stated by the Advocate General."

J. Shakespear, (fourth Judge.) "Mandeville, *alias* Fraser, *alias* Fergusson, states himself to be the son of a Scotchwoman, by a German father, and consequently denies the jurisdiction of our Courts. The Advocate General doubts the truth of Mandeville's account of his parentage; thinks it nevertheless better as a matter of expediency, that he should be tried by our Court, but says, that if Mandeville's story of

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his birth is to be credited, the offence imputed to him is properly cognizable in the Supreme Court. The Government, acting on the Advocate General's opinion, direct the trial of the accused by the Court of Circuit, unless he can prove himself to be a British subject. The case coming in reference before our Court, the question of jurisdiction is now under discussion, and the expediency of stating a case through Government, with the view of obtaining the opinion of the Supreme Court, is suggested before proceeding to judgment. There is nothing in the statutes quoted by Mr. Spankie, specifically defining a British subject from a native inhabitant. In Sec. 55, c. 155, of the 53d of Geo. III, however, it is stated, that " whereas his Majesty s British subjects are exempted from the jurisdiction of the courts established by the United Company, within the said territories, to which all persons, whether natives or *others*, inhabitant in the said territories, are liable. "The expression of " *others*" would appear to imply the recognition by the legislature of our practice of trying aliens, and the mixed progeny of Europeans and native mothers. Supposing Mandeville's account of his birth to be founded on fact, it does not, I think, follow that our jurisdiction is barred, and that his plea should be admitted as valid : an European, not being a natural born subject of England, is liable, I imagine, in this country, as an alien, when residing beyond the limits of the Mahratta Ditch, to the jurisdiction of our courts for acts of criminality, precisely to the same extent as the natives of the country are liable. Mandeville cannot, I conceive, therefore, by his father's side have inherited more than his father's rights ; and consequently he stands in the same predicament as if his father had been a native of India, in which case he would have been what we commonly denominate a half cast, born of an Indian and a Scotchwoman ; and we see every day that persons of this class, born of English fathers, and Indian mothers, are tried and sentenced to punishment by our courts. Mr. Spankie assumes, that Mandeville, being born of parents, one of whom was a natural born subject, the other a person at least owing a local and temporary allegiance to the king, and at a place governed by the English law, and subject to the undoubted sovereignty of the crown of Great Britain, and consequently within allegiance to his Majesty, is legally a British subject. This definition applies, with a very slight shade of difference, to every half cast born in this country of an English father, and native mother ; and if Mr. S. means to say, that all this class are to be considered British subjects, and consequently subject only to the Supreme Court, the interpretation of the law differs so much from our practice, that I think a special reference should be made to Government stating the difficulty we labour under. I would not try this man on the ground of expediency, as advised by Mr. Spankie, but on the ground of rightful jurisdiction. It signifies not whether our jurisdiction is doubted by the Advocate General ; it has heretofore been the practice of our courts to try persons similarly circumstanced, and in this case it is recognized by Government. If we entertain doubts ourselves on the general question of jurisdiction, such doubts can only be satisfactorily solved by an act of Parliament, defining specifi-

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cally the extent of our powers in such cases, and this, if considered desirable, might perhaps be obtained on a proper representation of the circumstances to Government, without application to the Supreme Court. I do not conceive that a reference of the question to the Supreme Court, is the proper course of procedure, because we must in such case virtually recognize a right in the Supreme Court, which it does not at present possess, of defining and controlling the limits of our jurisdiction. If the Supreme Court entertained doubts in any case of their own jurisdiction, how would that Court proceed? Certainly they would not consult us; they would act to the best of their judgment, without communicating with any other authority; and if they did wrong, they would leave that wrong to be redressed by appeal to his Majesty in council. Suppose Mandeville to be sent for trial to the Supreme Court, how would that Court prove his birth? Would he escape altogether, because they might fail in establishing his mother to be a Scotchwoman? The prisoner is not competent to waive his natural born rights; but assuming his own statement to be correct, I still think he is subject to our courts: and at all events, as he has subsequently withdrawn the plea urged against our jurisdiction, and as we are not accustomed in our courts to enter into that question, unless pleaded, or manifest on the face of the proceedings, and furthermore, as he states his inability to prove his birth, I do not see any necessity for demurring. We have with us the opinions of the Government and the Advocate General, for proceeding to trial in this individual case; and I do not think the doubts agitated by the latter are sufficiently tangible for making out a case, to be argued in the manner proposed; and even if made, the Supreme Court would not, I conceive, define a clear line of jurisdiction in all doubtful questions of this description, (which is what appears to be chiefly desired,) but would content themselves with stating an opinion on this single case of Mandeville, which would solve a very small portion of the doubts contemplated by Mr. Spankie, in the general remarks made at the close of his letter of the 16th of August. Let us in the first instance decide, without reference to other authority, whether we are competent to proceed to the trial of this man, and if determined in the negative, let us make him over to the Supreme Court. The general question of jurisdiction, in all cases of the description referred to by the Advocate General, may be discussed separately, and a representation on the subject, if deemed essential, made to Government, with the view of procuring a legislative enactment for the better definition of our jurisdiction, and a more distinct declaration of the line of difference between a British subject and a native inhabitant of India."

W. Dorin, (officiating Judge.) "Our Courts have criminal jurisdiction over all Europeans, other than British subjects, resident, or rather committing offences within their limits. Supposing Mandeville's account of his birth and parentage to be true, he is, according to the Advocate General, a British subject, (in the well known meaning that term bears in the acts of Parliament,) and not amenable to our courts. The Advocate General's opinion on that head, I take to

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be perfectly right. The only question seems to be, on whom the *onus probandi* as to the jurisdiction is to lie, that is, whether we are to prove him subject to it, or to make him prove that he is not; and try him, if he cannot prove the negative.

"I am of opinion we cannot try him without first having it shown that he is subject, and that on this head we must follow the practice of the Supreme Court. His assenting to be tried cannot give us jurisdiction. His answer to the charge, on the trial, contains a virtual denial that he is subject to it. The expedient mode might possibly be, to leave the proof to him; but it appears to me, we have no power so to do. It is evident, that in this mode we might be passing a sentence utterly invalid, and running the risk of so doing with our eyes open. The case would be quite different, if we acted on proof of his being subject, which to us should seem sufficient, though it afterwards turned out to be wrong. This would be an error regarding the proof to a fact, to which we, like all other courts, are always liable. The description of the prisoner by the Judge of Circuit, is in favour of the truth of his own description of himself. I imagine the Supreme Court would not hesitate to try him on his own admission now made. The evidence generally given in the Supreme Court, as to Europeans being subject to the jurisdiction, is, I believe, by persons who have heard the prisoner mention his birth and parentage, and this usually happens to the comrades of soldiers, where there are none who can speak to actual knowledge of the fact of birth and parentage."

A further reference was subsequently made to the Advocate General, with a view to ascertain more particularly the grounds of the opinion which he had delivered in this case, and the following reply was received from that officer.

"You may remember, that respecting this case of Mandeville, Fergusson, or Frazer, I only gave it as my own opinion, that supposing his statement true, he was a British subject, even within the India judicature charters and acts of Parliament. That he would be a British subject, to all intents and purposes, in the United Kingdom, cannot admit of any doubt. But I admit the question here as to jurisdiction, in the case of such a person, is one upon which a different opinion from mine may very plausibly be entertained. But I have no doubt at all, that if a person is found residing in the *Mofussil* in such circumstances as do not almost necessarily designate and prove him to be a British subject, and even in that, (which is only one of easier proof,) it is for such person to show and prove his right to decline the jurisdiction of the local courts. The practice of the Supreme Court, in requiring its jurisdiction to be proved by the prosecutor or plaintiff, is not at all founded on general principles, but is contrary to them, and has been introduced in consequence of the jurisdiction of the Supreme Court being expressly confined to particular and specified classes of *persons;* on which also has been superinduced more recently a *rule* of the Court, requiring the *mode* of being liable to the jurisdiction to be stated in every plaint, indictment, and other proceeding and *proved* accordingly, instead of leaving it to the defendant or prisoner to plead to the jurisdiction, or hold him concluded by his

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silence, which would be much more convenient. In England, in all the superior courts, and courts of general jurisdiction, jurisdiction is presumed, and is not stated, alleged, or proved, though there are cases in which the plea to the jurisdiction may be pleaded, and would be allowed. In courts of inferior and limited jurisdiction, it is necessary to show the jurisdiction; but this sort of limitation generally applies to *locality*, as the courts of cities and towns within their own limits. In this sense of locality, the highest courts are limited, as (with a few exceptions) every man must be tried within the *country*. In all these cases, however, the only allegation of jurisdiction is the averment that the contract (as in civil cases in *towns*, &c.) or offence was committed within the country, &c. but there is no allegation of *personal* jurisdiction, as in the Supreme Court in any case whatsoever that I recollect. The Court of Circuit, however, is not, I apprehend, a court of limited jurisdiction unless by reason of *locality*, which the highest criminal courts in England equally are. In all the provincial courts indeed (which appear to me *not* courts of limited jurisdiction,) jurisdiction is to be presumed, and it is incumbent on the party declining the jurisdiction to show his exemption. This does not appear to be proving a negative, but proving a *positive* fact, which, when shown, takes away the jurisdiction, which is, and I think ought to be presumed. I am clearly of opinion, therefore, that the *onus probandi* in this and all such cases lies on the defendant, though unquestionably the liberty of adducing such proof cannot be denied, which indeed may often be very inconvenient, and afford opportunities to delay justice. In criminal proceedings in England, there hardly can be such a thing as *personal* pleas to the jurisdiction, unless when peerage is claimed, as was in the case of R. *v.* Knollys, (1. Lord Raymond's Reports, 10.) All objections founded on the *locality* of the offence need not be pleaded, as the jurisdiction founded on locality must be proved by the prosecutor. With respect to the practice of European *foreign* courts, I cannot speak; but I apprehend the principle is, that jurisdiction is presumed as to all *persons*, when the courts are of *general* jurisdiction, as the courts of the *Mofussil* are. British subjects form exceptions; of course I cannot speak as to the ordinary practice of the *Mofussil* courts, and whether in all cases, they begin with requiring proof of jurisdiction over the persons. If they do not in every case, I see no reason why they should in any. In Mandeville's case, it seems to me, that if the plea was admitted *to proof*, it was all the Court was bound to do, and that it was the business of the defendant to prove it. I ought to add, that if the Judges of the Nizamut Adawlut are of opinion that the *facts* stated in the plea would not, though true, take away the jurisdiction of the provincial courts, the plea ought to be overruled, as in our courts, when on *demurrer*, the facts being admitted, the legal effect is denied. In that case, I do not know any remedy for the prisoner, but an application to the Supreme Court, which would decide the *point* of law."

The Court (present C. Smith, S. T. Goad, and J. Shakespear) having reconsidered the case, together with the latter opinion of the Advocate General, concurring in the *futwa* of their law officers, and be-

ing of opinion that the commitment and trial of the prisoner, who had been unable to prove himself a British subject, were legal, sentenced the prisoner R. F. C. Mandeville, *alias* Robert Frazer, *alias* Fergusson, to be imprisoned without labour and irons for five years in the jail of zillah Shahabad.

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MR. ORR,
against
MUKARIM and eleven others.

Charge—HIGHWAY ROBBERY and WOUNDING.

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Dec. 10th. Case of MUKARIM and others.

THE prisoners Mukarim, Roshun, Akbur, Mungoo, Fyzoolah, Bukshoo, Kurrum Khan, Ruhman, Kadir, Bheedho, Bahadoor, and Budlay, were tried at the 2d sessions of 1821, for zillah Cawnpore, on a charge of highway robbery and wounding. The case was in substance as follows. Mr. Orr, a merchant and indigo manufacturer, set off from his house at Jaujmow (near Cawnpore) on the night of the 27th of July last, to go by dawk to his indigo factory, at Dyapore. Having passed Chobeepore about a mile, between 3 and 4 o'clock on the morning of the 28th, he was awakened by his palankeen's falling to the ground, and, on putting his head out to enquire what was the matter, instantly received a sword wound on his forehead, from a man who stood a few paces off, demanding his money. Mr. Orr threw his handkerchief, in which three or four rupees were tied, and got out on the other side of the palankeen; by which time the robbers had made their escape. Mr. Orr, on calling the bearers, found that one of them had been severely wounded on the arm: his *petarah* was also missing. Mr. Orr, having returned to the Chobeepoor *chokee*, gave immediate information of the robbery, and then returned to Cawnpore in a boat. Mr. Orr having obtained a sight by star light of the robber who wounded him, who was remarkable from having a large gray beard, immediately on his getting home sent information of the same to the Magistrate, who issued *perwannahs* accordingly to the several Thanadars, and also sent the Kotwal of the town of Cawnpore to search for the robbers at Bithoor, the likeliest place to meet with them, both on account of its vicinity to Chobeepore and its being the residence of the ex-Peishwa Bajeerao. Information was brought by a burkundaz, who had been sent on the look out, that a man, answering the description sent by the Magistrate, with several others, had put up with Munnoo and Emambuksh, *Bhutteearahs*; and the Kotwal, Thanadar, and others, having proceeded to the Surrai, apprehended all the prisoners above enumerated. The prisoner Kadir, attempting to run off, was pursued and apprehended by a *suwar*; and on examining his person, a pair of silver buckles of which Mr. Orr had been robbed, as also a pocket handkerchief with Mr. Orr's initials worked on it with blue silk, were found upon

Two judges of the Nizamut Adawlut fully concurring in all points of a trial, are competent to pass a final sentence at variance with the opinions pronounced by two other Judges who differed from each other.

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him; and some pieces of cloth, evidently torn from shirts and jackets, were found in the house where they had put up. Their depositions being immediately taken, Mungoo admitted, that he had accompanied the gang, who wounded the gentleman and bearer; but stated, that whilst the attack was made, he sat apart at some distance. Akber described the manner in which the attack was made, and the place at which it was made minutely; but stated, that he did so from hearsay, not having been with the gang when it occurred. He admitted, however, that he had come across the Ganges with several others for the purpose of thieving. Fyzoolah and Mukarim admitted that they had become acquainted with the circumstance of the attack and wounding of the gentleman and bearer, having learnt them from those who made the attack, with whom they afterwards travelled. The remaining prisoners denied the charge, and generally stated, that they came across the Ganges for service. Kadir, on his being apprehended, stated, that a person named Dullail gave him the buckles and handkerchief found in his possession; and before the Magistrate he stated, that he found them on the road. On the prisoner's being confronted with the prosecutor, Mr. Orr declared, that although he could not swear to the prisoner Roshun, from the circumstance of his having seen him by star light only, yet he appeared in every respect like the person who wounded him. The witness Boodram bearer, who was severely wounded on the left arm, deposed much to the same effect; but Buldeo *Mussalchee*, who was carrying the *mussal*, within three or four paces of Boodram, deposed distinctly, at his several examinations, that he had a full view of the prisoner Roshun by the light of his *mussal*, and that he was the man who wounded Boodram bearer.

The law officer of the Court of Circuit declared the prisoner Mungoo convicted on his proved confession, and Sheikh Kadir on the circumstance of the buckles and handkerchief being found in his possession, soon after the robbery took place, on violent presumption of the highway robbery and wounding; as also Akber, on the minute description he had given of the attack; and Roshun on the evidence of Buldeo Mussalchee, corroborated by Akber's statement. Fyzoollah and Mukarim he also convicted of being accessaries after the fact, to highway robbery and wounding; and declared the other six prisoners entitled to their release. The Judge of Circuit perfectly agreed with his law officer in convicting the prisoners Mungoo, Sheikh Kadir, and Roshun of highway robbery and wounding. There was something, he observed, so remarkable in the appearance of Roshun, that a witness having once had a distinct view of him, could not forget him; and indeed, although Mr. Orr could not swear to his person, the *mussal* having been put out when he saw him, yet the prisoner was apprehended in consequence of the description given by that gentleman of his person. With regard to the prisoner Akber, he did not think that his deposition at the Thana went so far as to convict him of being with the gang when the highway robbery took place; but he was of opinion that he stood convicted, together with Fyzoollah and Mukarim, of being accessaries after the

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fact, to highway robbery and wounding. He concurred with his law officer in acquitting the other prisoners of the charge; but in sending a warrant to the Magistrate for their release, he in a separate proceeding, ordered their detention until they should severally give security for their good behaviour, for four years, in the penal sum of 50 rupees, or in default to remain in prison for two years. As his opinion was at variance with that of the law officer relative to the crime of which Akber stood convicted, he submitted the trial without passing sentence of punishment, in conformity with Section 22. of Regulation VII. 1803.

The *futwa* of the law officers of the Nizamut Adawlut, declared the prisoners Mungoo, Sheikh Kadir, Akber, Roshun, Fyzoollah, and Mukarim convicted of having been accomplices in highway robbery, attended with wounding, and declared them liable to discretionary punishment by *Acoobut.*

On the merits of the case, the officiating Judge, (W. Dorin,) by whom the case was first taken up, expressed himself to the following effect. "There is suspicion that many of these prisoners may have been concerned in the robbery of Mr. Orr; but I am not satisfied with the evidence against any one of them, except Kadir, who I think, on his own admissions, and the identification of the buckles and *roomals* found upon him, is convicted of the knowing receipt of property obtained by robbery. I think the evidence against Roshun insufficient. Mr. Orr cannot swear to him, though he inclines to think him the man who wounded himself, (Mr. Orr,) while the one witness (the *mussalchee)* who does swear to him, says he saw him wound the bearer. Some of them at the Thana (if the Thana examinations are worth any thing) say it was another who wounded the gentleman. One of the questions put by the Judge of Circuit, implies that there were two or three others with white beards. The Thana examinations do not seem to me much to be depended on. The Darogha and Mohurrir in fact witnessed them all. I would sentence Kadir to fourteen years imprisonment, and release the rest. I see no clear ground of detention for security, except the general ground be taken that they all came from the Oude country in search of livelihood. Those who are stated in the *futwas* to have known and concealed the fact of robbery, could not well have divulged it before, if they wished it. The Thanadar was with them almost immediately after the occurrence."

The second Judge (C. Smith) differed from the officiating Judge, and agreed with the *futwa*, that there was strong presumption against all the six prisoners of having been engaged in the highway robbery. He proposed that they should all six be sentenced to fourteen years imprisonment, with hard labour, in banishment from the Cawnpore district. The proceedings having next been laid before the chief and third Judges (W. Leycester and S. T. Goad) they differed from both their colleagues, being of opinion that Sheikh Kadir and Roshun should be sentenced to receive 39 *corahs*, and to imprisonment in transportation for life, and Mungoo and Akber 30 *corahs*, and fourteen years imprisonment; but considering Fyzoolla and Mukarim to

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be convicted of privity only to the robbery, they were of opinion that those individuals should be sentenced to seven years imprisonment *.

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* A discussion arose as to this sentence, which originated in the following minute of the 2d Judge. "In this case it appears to me, that my opinion and the officiating Judge's virtually negative the sentence of transportation for life, to which the 1st and 3d Judges think Roshun and Kadir should be sentenced, and that their sentence cannot be deemed final unless approved by the 4th Judge, who has not yet seen the papers."

The Chief Judge observed. "The officiating Judge did not agree in the conviction of Kadir of the crime laid to his charge. Three Judges did, of whom two passed the sentence in question. Is it intended to be said, that if the officiating Judge had proposed a year's imprisonment, that such opinion would have had the same effect as that now ascribed to it, or does it acquire that virtue from the mere accident of the punishment proposed by Mr. Dorin being the same as that proposed by Mr. Smith? I do not see how an opinion regarding stolen property is to affect three opinions regarding highway robbery." In the above opinion he was joined by the officiating Judge.

The 2d Judge, however, rejoined. "I am not satisfied. It has, to the best of my knowledge, been the usage of this Court, whenever two Judges come to an opinion more favourable to a prisoner than any other two Judges, whether the judgment of the two Judges first mentioned exactly correspond or have shades of difference, and whether that opinion is in the shape of a total acquittal, or a less severe punishment, or conviction of a less heinous offence, to call in, if practicable, (it is at present practicable,) a fifth voice to make the balance preponderate one way or the other. It is not a month back that the officiating Judge, in the case of the Moorshedabad Burkundaz, charged with murder, suggested the propriety of commuting the capital sentence to one of perpetual imprisonment, upon no other ground than that the 1st Judge thought the proof insufficient, and the accused entitled to release, and in the officiating Judge's suggestion I acquiesced. The sentence will of course pass as approved of by the 1st, 3d, and officiating Judges."

The officiating Judge recorded the following minute in explanation. "I think it necessary to explain, that I do not concur in the sentences passed on the prisoners in this case, and that I consider myself altogether left in a minority on that point, and that my voice goes for nothing. I merely gave an opinion, in concurrence with the chief and 3d Judges, on the abstract point, whether under such and such circumstances, their voices were decisive, which I thought they were. As to the sentences passed, I of course can have no wish, but rather the contrary, that the case should not be taken up by a fifth Judge. And as this course would be satisfactory to the 2d Judge, and can do the accused no harm, I would suggest that it be done, and I dare say the chief and 3d Judges will not object. I confess it would also be satisfactory to me." And the third Judge added, that the 4th Judge was perfectly at liberty to take up the case, if he chose; that he had no sort of objection, but rather wished to satisfy the scruples of the 2d Judge. It appeared, however, that the sentence had been issued, and on the 2d Judge's expressing a desire that it should be recalled, the chief Judge recorded the following observations. "I am not for recalling the sentence, though I would not have objected to the 4th Judge taking it up. I should have done so, however, upon the principle that the measure was one to which I could have no motive of objection, not that I thought it necessary. I am not aware of the existence of the practice quoted by Mr. Smith, with regard to the Moorshedabad Burkundaz. In passing sentence, the Judges will, I suppose, always act on any thing which may weigh on their mind in favour of the prisoner; and if the Judges who passed sentence in the case in question could have discerned any ground on which the 2d Judge proposed a mitigated sentence,—if they had not, on the contrary, considered it a case that required example,—they would doubtless have been influenced by that opinion in passing sentence. To do a thing, and propose

GOVERNMENT,
against
MIHRBAN and 162 others.
Charge—DACOITY, &c.

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Case of a gang of 163 persons, of the *Shighalkhor* or *Budhek* cast, who issuing from their haunts in the jungles of the Oude territory, assumed the garb of a Raja and his retinue proceeding on a pilgrimage, entered the Company's territory, and attacked a boat laden with treasure, which they carried off, killing one man, and wounding ten, and having made good their re-

THE prisoner Mihrban and 162 others (whose names are given below, *A*) were tried at the second sessions of 1820 for Zillah Behar, charged, No. 1 to 145 inclusive, with having committed a Dacoity on a boat at Mukra, attended with murder; and No. 146 to 163 inclusive, with being accessaries in the same; and the whole of the prisoners were besides charged with being notorious Dacoits of the cast of *Shighalkhor* and *Budheks*, and, having again left their haunts and entered the Company's provinces with an intention to commit Dacoitee, having actually fixed their plan to plunder a dispatch of private treasure in gold mohurs, &c. proceeding from Calcutta to Benares, to gain information respecting the progress of which they had sent out their scouts. The robbery charged against the prisoners occurred at the village of Mukra, on the banks of the river Ganges, in the Thana of Dareeapore in the Behar district, on the night of the 26th of February 1820, corresponding with the 27th of Fagoon 1227 F. S. when a gang of about 200 Dacoits attacked, in two parties, a boat from Calcutta laden with treasure, which had come to for the night on a sandbank, about half a mile north of the village; and plundered it of 25,000 Spanish dollars, in 25 bags, and upwards of 2600 Benares and Furruckabad rupees, belonging to the house of Byjenauth and others. One of the armed peons on board the boat was killed by a ball which was fired by the Dacoits, and ten other peons were wounded with swords and spears. It appeared from the deposition of Alufkhan, the first witness, who was Jemadar of peons in charge of the boat, that the dollars were put on board at Calcutta, and the rupees by the Gomashta of the house of Byjenauth at Moorshedabad, and that at the time the latter were put on board, a person, who did not appear to have any concern with the house, asked several questions respecting the strength of the guard and arms, which the witness observing, desired him to go away, and the boat then proceeded towards Patna. This witness further stated, that, on

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it to be done, are so nearly the same, especially when it shackles any other one Judge who may take up the case, (if I had taken up the case, and agreed with Mr. Smith, I must have done so in absolute ignorance of the ground of mitigation,) that I take this opportunity to question the legality of one Judge proposing a mitigated punishment, without stating the grounds of mitigation, which is required by the Regulations, when one Judge mitigates punishment. In this case, the convicted were liable to the punishment they got, even if they had not wounded Mr. Orr and another. This wounding was an aggravation, and there were other circumstances of aggravation, and not the least symptom of any thing that I could see, which suggested mitigation."

The third, fourth, and officiating Judges being also adverse to the measure of recalling the sentence, the proposition to that effect by the second Judge was of course over-ruled.

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treat unsuspected, were proceeding, in the following year, on a similar expedition, when they were apprehended. Being tried for the above offences, the leader was sentenced to be hanged. Of his associates, 36 convicted of being accomplices in the above robbery, sentenced to receive 39 *corahs*, and to be imprisoned in transportation for life. Four convicted of privity to, and connivance in the said robbery, and of being professed Dacoits, to receive 30 *corahs*, and to be imprisoned in banishment for 14 years, and then to find security for good behaviour. 76 convicted of going

the day the Dacoity took place, he saw two men and two women sitting on the side of the river. They had a blunderbuss with them, which attracted his notice, and he since recognized them to be Soudanee Kuhar, and the prisoner Chotay (No. 109): but he had no suspicion at the time that they were robbers. The witness appeared, however, to have been anxious to carry the boat on to near a village, but was prevented effecting his purpose by the strength of the current, and was in consequence obliged to come to, on the sandbank where the robbery occurred. No traces were obtained of the robbers until about six weeks after, when Mr. McFarlan, the joint Magistrate of Monghir, was directed by Government to proceed to the spot to endeavour to discover the perpetrators of it, and obtain such information as might lead to their apprehension. On reaching the village of Mukra, that officer obtained information, that on the night of the robbery, a person calling himself a Raja of Oude, returning from a pilgrimage, had encamped with upwards of 200 followers under some trees near to the village of Mukra; and that, before next morning, they had decamped; and about a coss south of Mukra, some boys feeding cattle had found one of the bags which had contained the dollars, with the seal of the house of Byjenauth upon it. One of the dollars had also been found, and a spear-head, which were sent to the joint Magistrate by the Thanadar of Bar: and as it appeared that this Raja and his party had left the high road, and gone in this direction, in a disorderly manner, through the villages of Kujooraur and Kubeerchuck, the joint Magistrate suspected them to be the robbers. On proceeding to the village of Dareaporebind, the joint Magistrate found that the supposed Raja and his party had encamped there the night after the Dacoity, (27th February 1820,) and from thence they had gone to Deepnuggur, where they remained two days to celebrate the *Hooly*. From this they were traced through Maleesand and Gowherpoor to Rampoor, at which latter place they stayed two or three days, and the Raja there hired bearers to carry some of his women by Daoodnuggur to Sasseram. Mr. McFarlan, being obliged to return to his station from Daoodnuggur, deputed Sham Lal Bose, the Thanadar of Monghir, an active and intelligent native officer, to endeavour to follow and trace the route of this Raja and his party, who in consequence proceeded to Sasseram, where he heard from some bearers, that a person calling himself Raja Mihrban Singh of Gour, in Oude, had arrived there about the beginning of Chyte, with a number of followers and women in *doolees* and *palkees*, and hired them as bearers to carry his women on to Azimgurh. They also stated, that the pretended Raja had directed a gardener at Sheosagur, three coss west of Sasseram, to plant some trees near a tank there, and advanced money for the purpose. The next intelligence obtained respecting the gang was from a Burkundaz, who had been sent on to Azimgurh, and who returned with several of the bearers who had been hired there by the pretended Raja. They stated, that they had accompanied him to his own country in Baraitch, in Oude; and had found that he was the leader of a gang of robbers, of the cast of *Shi-*

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ghalkoosht, and was returning with his gang after committing a Dacoity in the Company's provinces. This information was reported by Sham Lal Bose, to the acting Magistrate of Shalobad, who directed him to proceed to Juanpoor, and communicate such particulars as he might be able to collect, to Mr. Cracroft, the Magistrate of that zillah; who on the arrival of this officer immediately sent for all the bearers from Azimgurh, who had accompanied Mihrban to Oude, as well as a person named Soudanee Kuhar, who had been a servant of the pretended Raja Mihrban, and who, on being brought before the Magistrate, confessed having been with him when he committed the Mukra Dacoity. From this man's statement, as well as from other information obtained by Mr. Cracroft respecting the gang, that gentleman was induced to address the Government on the subject, and ultimately to call upon the officer in command at Secrora to assist in apprehending Mihrban and his gang. The detachment, which was in consequence sent on this duty, was accompanied by Sham Lal Bose, Soudanee Kuhar, and some of the bearers who had gone with Mihrban from Azimgurh; but owing to the thickness of the jungle, the resistance offered by the gang, and other causes, nothing was effected, and the troops returned to Secrora. They however learned that Mihrban and his gang, accompanied by several inferior chiefs, had left their haunts on a plundering expedition, and that his brother Chedee had commanded the party who resisted the detachment. They also heard that Mihrban travelled with some men dressed as sepoys in the Company's service, and gave himself out to be a Raja going on a pilgrimage, which information was communicated by Mr. Cracroft to the Magistrates in the Behar and Benares divisions. On the receipt of this notice, the acting Magistrate of Behar, (Mr. Smith,) considering it probable, that the gang (in the event of their coming eastward) would approach by the new road, as they had done on the former occasion, issued instructions to the Thanadars in the vicinity of the Soane, and particularly to those of Daoodnugur and Jahanabad, to establish a line of posts, by which they might be intercepted, in the event of their coming by bye roads. He also instructed the Thanadar of Gya to send several intelligent persons up the new road, beyond the Soane, with the view of obtaining timely notice of the approach of any persons answering to the description of the gang noticed in Mr. Cracroft's letter, and at the same time cause him to institute the most particular enquiries amongst the Gyawals, to endeavour to ascertain whether they had received any intimation from their people, called *Burbureeas*, (who are always on the look out for pilgrims,) of the approach of a Raja attended by seapoys. From this latter source information was obtained, that a Raja with persons in the dress of sepoys had been heard of near Mohoneea, on the opposite side of the river from Ghazeepoor, who was moving towards Sherghatty; and from the nature of the intelligence received respecting them, the acting Magistrate had every reason to suppose that they were the people of whom he was in search. Fearing, however, that the Raja and his gang might obtain intelligence of his measures, and disperse, should he attempt to assem-

forth to commit robbery, and of being professed Dacoits, to be imprisoned in banishment for 7 years, and then to furnish security. 15 convicted of going forth to commit robbery, to be imprisoned in banishment for 7 years. 31 (women) acquitted. The remaining prisoner, though convicted of having accompanied the robbers, was found to be insane, and ordered to the hospital.

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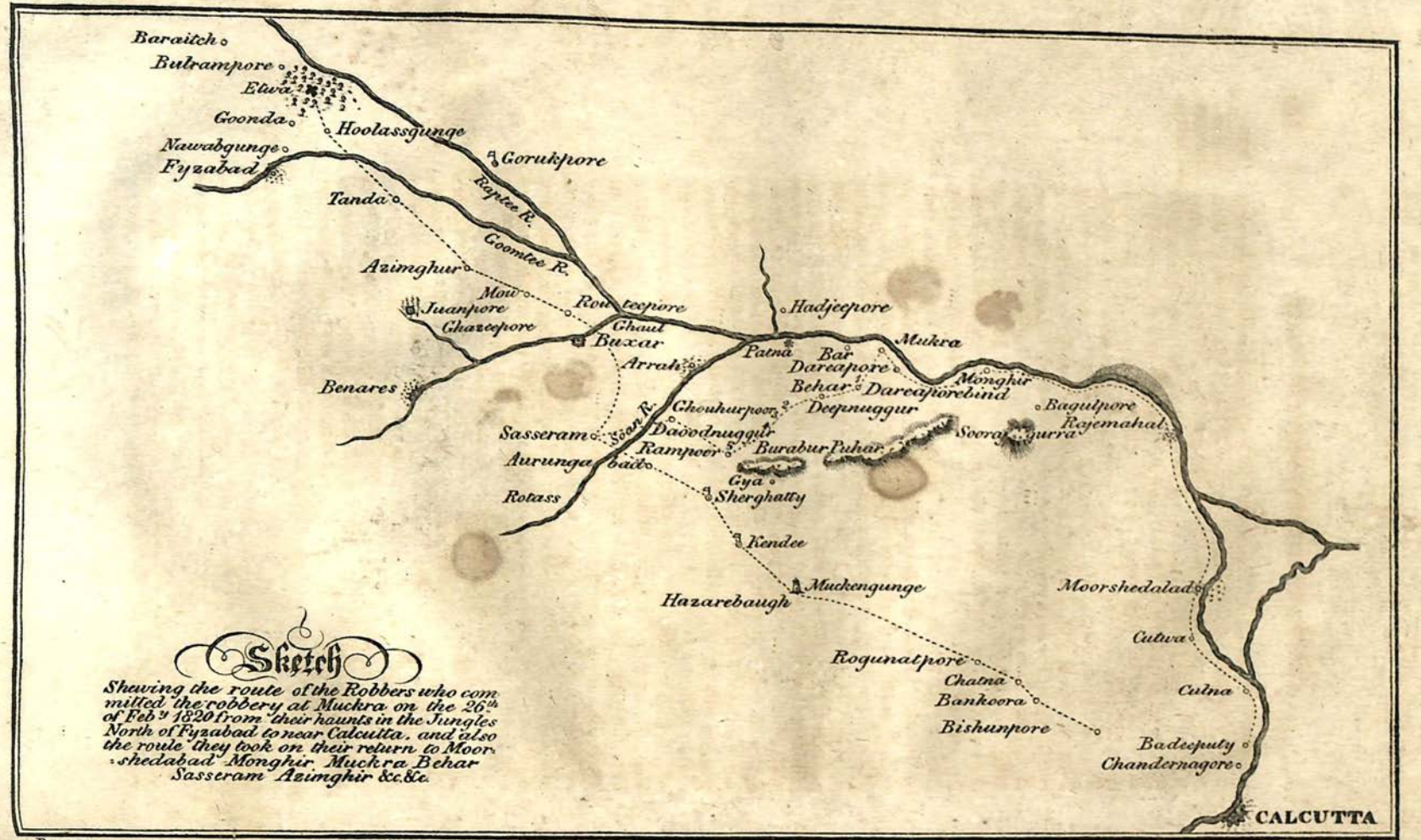
ble a force sufficient to apprehend them, he sent out persons to join them, and persuade them to proceed to Gya, and concerted measures with the Magistrate of Ramghur (then at Sherghatty) to apprehend them, should the former plan be unsuccessful. Mihrban and his party, however, appeared to have received some vague information from travellers that they were suspected, which alarmed them, and induced them to halt, about seven coss west of Sherghatty, where after consulting with the other chiefs, it was agreed that Mihrban, with the persons dressed as sepoys and a few of his followers, should endeavour to pass Sherghatty, whilst Munsa Sirdar, 3, with the great body of the gang, waited the result. Hearing, however, that Mihrban and his party were gone to Gya attended only by two *Chupprasses*, and that he had not been under any restraint at Sherghatty, Munsa 3, and his party were induced to cross the country towards Gya, with a view of joining their leader at that place; and encamped in the vicinity, where they were apprehended, and immediately carried before the Magistrate. Mihrban, on being brought before the Magistrate, said his name was Setaram, and that he was a zemindar from Baraitch, in the territory of the king of Oude, going on a pilgrimage with his followers. He denied having been in these provinces last year, which he still insisted upon on his trial, but the account he gave of himself was of itself very suspicious. The rest of the prisoners made nearly the same excuse, some admitting that they accompanied the *Baboo* (as they called him) as servants, whilst others denied having any concern with him, or having ever heard of him, although from the neighbouring villages. In general, however, their statements were contradictory, and did not even preserve any consistency respecting the names of themselves and their fathers, or places of residence. They had also frequently altered their appearance, both before the Magistrate and this Court, by painting their bodies, covering their faces with ashes, exchanging garments with each other, &c. The only direct evidence against Mihrban and the persons concerned with him in the Mukra Dacoity, was the disclosure made by Soudanee Kuhar, who had been admitted as an evidence in consequence of having obtained a conditional pardon from the superior Court, and the confession of the prisoner Heera, No. 32; the latter admitting that he was actually concerned in the Dacoity, and the former that he accompanied Mihrban last year as a bearer, and stayed with the women close to the village of Mukra whilst the gang attacked the boat. Their statements respecting the Dacoity, and the persons concerned in it, were so fully corroborated, not only by the strongest circumstantial evidence, but also by the deposition of Soorut Sing, formerly a Sepoy in the native infantry, who had lately been engaged by Mihrban to drill his Sepoys, and to whom, upon the recommendation of the acting Magistrate, a conditional pardon had also been granted, that there was no reason to doubt their correctness. The account given of the gang by the persons above mentioned was as follows. They stated, that Mihrban, *alias* Bulbeer, was the real name of the person calling himself Seetaram; that he was the son of Chait Roy, and ne-



Sketch

Shewing the route of the Robbers who committed the robbery at Muckra on the 26th of Feby 1820 from their haunts in the Jungles North of Fyzabad to near Calcutta, and also the route they took on their return to Moorshedabad Monghir Muckra Behar Sasseram Azimghir &c.&c.

Pearson

Baptist Mission Press

phew to Bhoop *alias* Munsaram, both of whom were companions of the celebrated Kulundur, the former leader of the Oude gang of robbers, and after his death, were, themselves, sirdars; that Chait Roy was then too infirm to take an active part, and Munsaram, from having been latterly unsuccessful, had declined in power, and thus Mihrban had become the chief of the horde of *Sear Mirwas*, who resided in an extensive jungle, situated between Fyzabad and Bulrampore, in the territories of the king of Oude; a race of people who lived by rapine and plunder, to commit which they made yearly incursions into the Company's provinces. They further mentioned various Dacoities previous to the one committed at Mukra, in which Mihrban, Munsah, and other chiefs had been concerned. By their depositions, it also appeared, that in the month of Kartick 1227, F. S. corresponding with October 1819, A. D. Mihrban, accompanied by Bureleea and Ajrail, two inferior chiefs, and about 200 followers, men and women of his own caste and profession, left his haunts, and, travelling under the disguise of a Raja going on a pilgrimage, proceeded down the new road *via* Sasseram, Hazarebaugh, and Bankoora, and halted at Badeeputy near Serampore*, from whence he sent the prisoners, Kala, Thoree, and others to obtain information regarding the despatch of treasure from people of the Brijbasee caste, who are in the employ of the native bankers, and appeared to be in collusion with the robbers. The spies having returned, the whole party proceeded westward along the banks of the river by Culna, Cutwa, Moorshedabad, to Monghir; thence they dogged the boat till it came to, on the evening of the 26th of February, at the *Deeara* opposite Mukra, when the gang encamped amongst some trees in the vicinity, and at night, leaving their women and baggage, attacked the boat and plundered it, killing and wounding those who opposed them. The gang then made off with the property, Mihrban with only a few of his men returning to accompany the women: he, however, soon joined his party, and all encamped at Dareaporebind, and after this, continued their journey towards the Oude provinces, by the route before mentioned. They further stated, that the gang, having divided the plunder, remained in their haunts the whole of the rainy season, and it was during this period that Mihrban took into his service Soorut Singh, to drill some of his men as sepoys in the European manner, in order that the disguise he meant to assume on his next expedition of a Raja, travelling on a pilgrimage with a guard of Company's sepoys, might be more complete. It was also ascertained that Munsah and his followers first entered the Company's provinces, in October last, were followed by Mihrban and his party a few days after, and that the two gangs, proceeding by different routes, joined at Arungabad, on the eastern side of the Soan, from whence they moved towards Sherghatty. There was also every reason to believe, from the confession of Heera, corroborated in a great

* See the track of the route of the robbers, given in the annexed chart, *B.* as affording a proof of the circumspection and dexterity with which they carried on their proceedings.

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measure by the testimony of Soorut Singh, that the object of the gang on the present expedition, was the plunder of another boat of treasure, of the despatch of which from Calcutta they had already received information from one of the Brijbasees in the employ of the native bankers, and to trace the progress of which, spies, since apprehended, had been sent out. The witnesses examined on the part of the prosecution, fully recognized the prisoner Mihrban to have been the person who called himself a Raja of Oude, and who encamped under the trees near Mukra, the day on which the Dacoity was committed. He had also been recognized, as well as a considerable number of the people with him, by persons at the different stages at which he halted, and the particular description given by the witnesses previous to his apprehension, of the person of Mihrban, and of a lameness occasioned by a distortion of the toes of his left foot, one of which was turned up, rendered the fact of his identity beyond the possibility of doubt. The following was a summary of the facts proved by the witnesses, as given by the Circuit Judge. Witness No. 1, proves that a boat containing 25,000 dollars, and 2,650 Benares and Furruckabad rupees, on the night of the 26th of February 1820, at the village of Mukra, was attacked and plundered, and that one person named Khooshhal was killed, and ten wounded, and recognizes the prisoner Chotay 109, to be the person he saw with a blunderbuss on the side of the river before the boat was brought to on the sandbank. The witnesses Nos. 2, 3, and 4, prove that Mihrban and his followers crossed the Ganges, at Routeepore Ghaut, in October 1819, on his way to the eastward, and recrossed on his return the beginning of March, 1820: they particularly describe his mare to be the same he had last year, and state, that he called himself a Raja of Ajoodheea, going on a pilgrimage. The witnesses Nos. 5, 6, 7, 8, 9, 10, 11, and 12, are bearers of Sasseram, who were hired by Mihrban, then calling himself a Raja, in the beginning of Cheyt last, to carry some of his women to Azimghur: they particularly describe him, and point out Kala Singh to be his *Karpurdaz*, and Munsah to have been his servant, and also recognize Bundhoo, Nund Lal, Thoree, Bhoop, Hoolas, and several others. Some of them farther state, that in October, 1819, when Mihrban was on his way eastward, they accompanied him to Hazarebaugh, where they were discharged. The witnesses Nos. 13 and 14, prove that Mihrban came, in Cheyt, 1820, in the disguise of a Raja to Sheosagur, three coss west of Sasseram, and directed trees to be planted near a tank, and advanced money for the purpose to witness No. 13, who is a Malee. The witnesses Nos. 15, 16, 17, and 82, prove that the prisoner Mihrban, with about 150 followers, encamped under some trees near the village of Mukra, on the day on which the Dacoity was committed, and all, with the exception of No. 17, particularly recognize Mihrban, and swear to the mare being the same on which he rode last year. The witnesses Nos. 18, 19, and 20, state, that they saw a number of persons proceeding in a disorderly manner through the fields, on the morning after the Dacoity, by the villages of Khujoorar, Kubeerchuck, in a

southerly direction, who on being questioned as they passed, by some of the witnesses, said they belonged to a Raja of Ajoodheea returning from a pilgrimage. The witnesses Nos. 21 and 22, recognize Mihrban to have been the person calling himself a Raja of Oude, who encamped with his followers at Dareaporebind on the 27th of February last, the day after the Dacoity, and identify several of the prisoners. The witnesses Nos. 23 and 24, are Chokeedars, who saw the gang at Deepnuggur, on the 28th of February last, but I do not place much confidence in that part of their testimony, which goes to identify many of the prisoners now here, to have been with Mihrban last year. The witnesses Nos. 25, 26, 27, 28, 29, 30, 31, and 32, who saw Mihrban and his followers last year at Deepnuggur, identify him, and several of those now with him, and mention several circumstances, such as their having purchased a hog and a quantity of spirits, and their being dressed in a peculiar manner, which might of itself have excited suspicion, had the news of the robbery reached them at the time. The witnesses No. 33, 34, and 35, prove that Mihrban and his gang, several of whom they recognize, passed Ghouhurpoor, where they remained one night, on or about the 2d of March 1820, and then proceeded to the westward. The witnesses Nos. 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53, identify Mihrban and several of his gang to be the same who encamped near Rampoor, in zillah Behar, about the 3d of March last year, calling themselves a Raja and his followers of Ajoodheea, returning from a pilgrimage. Here the party halted two or three days to refresh themselves, and hired bearers to carry the *Raja's doolees* and *palkees* to Sasseram. Mihrban is here described by the barber who shaved him, who also mentions the distortion of the toes of his left foot. His servant Munsah is also particularly recognized as having broken the barber's razor. The bearers hired by Mihrban at this place also state, that the gang, avoiding Daoodnuggur and other large villages, proceeded across the Soan to Sasseram by unfrequented roads, The witnesses Nos. 54, 55, and 56, are bearers who accompanied Mihrban from Azimghur. They state, that there were only about 50 people with Mihrban when he left Azimghur, and that they were engaged to carry one of his women in a small *dooly*; that the party proceeded by Soher Tanda, &c. crossed the Surjoo to the east of Fyzabad, and by unfrequented roads reached a heavy jungle, north of Fyzabad, where they were discharged. They heard from the woman they carried, that she was the wife of Mihrban, who she said was a Dacoit, and of the cast of *Sear Murwa*, and that they were then on their return from a plundering expedition. They further state, that on leaving the jungle, they heard the firing of small arms, which they supposed was rejoicing, as, on reaching the village of Muchlee soon after, they were told by a person, who was sitting at a well, that Mihrban was a *Sear Murwa*, the chief of a horde of robbers, and were advised not to mention his name. They also swear to the identity of his mare, *palkee*, his *karpurdaz* Kala Singh, Munsah his servant, and several of his followers. The witness No. 57 is the

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Thanadar of Monghir, who traced the robbers from Sasseram to their haunts in the jungles, and afterwards accompanied the detachment sent from Secrora to apprehend them. The rest of the witnesses merely prove the fact of the robbery, that an inquest was held on the body of the person murdered on board the boat, and the apprehension of the prisoners at Sherghatty, Gya, Jahanabad, and Helsa.

The recognition by the above witnesses of the persons who accompanied Mihrban the year before, and were concerned with him in the Mukra Dacoity, as well as by Soorut Singh, Soudanee Kuhar, and the prisoner Heera, and other particulars respecting them more clearly appeared by the statement marked *A*, which also accompanied the address of the Circuit Judge. The prisoners contented themselves with simply denying the charges, and neither offered any defence nor called any witnesses to prove their being persons of respectable character, which, added to the unsatisfactory account they gave of themselves, formed strong presumption against them.

The law officer of the Court of Circuit, for the reasons stated in his *futwa*, convicted the prisoner Mihrban (No. 1) of being the leader, and Nos. 5, 6, 8, 10, 12, 13, 17, 18, 19, 20, 24, 25, 27, 35, 38, 42, 46, 49, 65, 73, 75, 84, 91, 93, 99, 107, 109, 148, 151, 152, 155, 157, 160, 161, and 162, of being of his gang, and concerned with him in committing the Mukra Dacoity. He also convicted Nos. 7, 9, 11, 14, 15, 16, 21, 26, 28, 30, 146, 147, 149, and 150, of accompanying Mihrban this year, with the intention of committing Dacoity, and declared them liable to discretionary punishment. He further stated, that the suspicion which existed of their being concerned in the Mukra Dacoity against Nos. 2, 4, 22, 31, 34, 39, 40, 44, 47, 51, 59, 62, 77, 78, 81, 86, 87, 96, 98, 103, 108, 110, 111, 112, and 113, against the prisoners Bhoop *alias* Munsah of being a leader of a gang of robbers, and against Nos. 23, 29, 33, 36, 37, 41, 43, 45, 48, 50, 52, 53, 54, 55, 56, 57, 58, 60, 61, 63, 64, 66, 67, 68, 69, 70, 71, 72, 74, 76, 79, 80, 82, 83, 85, 88, 89, 90, 92, 94, 95, 97, 100, 101, 102, 104, 105, 106, 114, 153, 154, 156, 158, and 159, of being part of his gang, was not sufficiently strong to warrant their conviction; and he entirely acquitted the rest of the prisoners.

The Judge of Circuit observed, that he could not concur in a great part of this *futwa*, because it acquitted many of the prisoners against whom there appeared to him to be the strongest presumption of their having been concerned with Mihrban in the Dacoity at Mukra the year before, and convicted some of being concerned in it against whom he did not think there was sufficient proof, and because it also acquitted Bhoop, *alias* Munsah Sirdar, and his followers, not only of any concern in the Mukra Dacoity, but of having accompanied Mihrban this year for the purpose of committing a similar depredation, and of being by profession robbers. In a case like the present, he observed, it was not probable that the persons attacked should ever recognize the robbers; and in the plunder of treasure, it was equally improbable that any part of the plundered property should be recognized. Direct evidence against the perpetrators of it,

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could therefore only be obtained from the testimony of accomplices; but such could only be relied upon, when corroborated by the strongest circumstantial proof. His opinion of the case at large he submitted in the following terms. "In this case, it appears to me that the statements of Soorut Singh, Soudanee Kuhar, and Heera, as far as they go, are fully supported by the rest of the evidence: any discrepancy in the detail given by them respecting the persons concerned in the Mukra Dacoity is easily accounted for, from the circumstance of Heera alone being concerned in the Dacoity, and himself one of the gang; Soudanee Kuhar having been only hired as a bearer, and left with the women and baggage at some distance from the place where the robbery was committed, and Soorut Singh having only heard the particulars stated by him from Mihrban and others: besides this, Heera and Soudanee can only speak positively respecting the people immediately under their own chief, and although they may name and describe most of the inferior leaders of the gang, they cannot be expected to know all their followers. It is true that Soudanee Kuhar at first denied on oath before me having any knowledge of the prisoners; but this, I am inclined to think, proceeded from fear of the consequences, inspired by the prisoners, who frequently threatened and abused the witnesses even in my presence, and does not in my mind render his testimony less credible, as it is perfectly consistent with what he at first disclosed to Mr. Cracroft, before the prisoners were apprehended, and agrees with what he afterwards stated before the acting Magistrate of this district. The witnesses who recognize the prisoners at the several stages, the year before, frequently mistake one person for another, which is not to be wondered at, as many of them are much alike, and most of the witnesses saw them for a short period only, and under very different circumstances; and besides, these witnesses do not speak with any degree of certainty to the identity of the prisoners, with the exception of Mihrban, Kala Singh, Bundhoo, Nund Lal, Kunhya, Thoree, Munsah, Bhoop, Chotay, and a few others, who they positively swear to have been with Mihrban last year. After the most attentive consideration of all the circumstances of the case, I am of opinion, that from the testimony of the persons above mentioned, supported by a chain of circumstantial evidence, there is strong presumption that the prisoner Mihrban is the chief of a horde of robbers, who have their haunts in an extensive jungle to the north of Fyzabad, and was the leader of the gang of robbers who committed the Dacoity attended with murder, at the village of Mukra, on the 26th of February, 1820, and that Kala Singh, Bundhoo, Nund Lal, Kunhya, Thoree, Munsah, Bhoop, and Chotay, were either inferior Sirdars or confidential persons under Mihrban, and actively concerned with him in the perpetration of the robbery, and therefore deserving of capital punishment. That Sheodeen, Davee Singh, Beerbul, Ramdial, Rambul, Bhageerut, Burryah, Hurchund, Budloo, Pirthee, Motee, Chumroo, Munsah, Keerut, Rawur Singh, Zalim, Lekhye, Ramdeen, Goray Lal, Dullah, Bitchook, Ramdeen, Jhurryher, Ishree, Ramdeen *alias* Goray Lal, Buljeet, Duljeet, Jeet, Nuahoo, Bacha, Bussawun, Mudaree, and Bhitchook,

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belonged to the gang which committed the Mukra Dacoity, and were concerned therein, and whom, although also liable to capital punishment, it would probably sufficiently answer the ends of justice to sentence to transportation for life with 39 *corahs*. I have also strong reason to believe the prisoners Bukhtour, Hoolas, Mayru, Duhpelooa, Sudhaun, Hoolas, Oree, and Deena, accompanied Mihrban last year as bearers or other servants, and were privy to the Dacoity, and are persons who probably always accompanied him on such expeditions, and I therefore consider them deserving of 39 lashes with the *corah*, and 14 years imprisonment. With respect to Munsah and his gang, it appears to me, from the testimony of Soorut Singh, Soudanee Kuhar, and the prisoner Heera, and from a local investigation and depositions taken by the Darogha of police, in the service of the king of Oude at Fyzabad, obtained through Mr. Cracroft, that the prisoner Bhoop, *alias* Munsah, *alias* Pasee, is one of the leaders of the horde of *Sear Murwas*, and a robber by profession, and that he accompanied Mihrban this year for the purpose of committing robbery; and that the prisoners Biram Singh, his son Sookha, Dhunput, Muhlaul, Bhowanny, Mayrey, Ramdial, Bukhtour, Dyaram, Doorga, Murdun, Muhlal, Hurgobind, Ummer Singh, Hoodye, Boojawun, Motee Singh, Shewuk, Teekyte, Madhow, Teetur, Jeeun, Kodye, Runjeet, Benepershad, Rambul, Jokhun, Oody, Sheodeen, Nuseeb, Horil, Durea, Sheodeen, Sawul, Daveedeen, Davee, Radhay, Kunhye, Geerdharee, Zalim, Tek, Khurga, Nanhoo, Jeeasoo, Buldeo, Teek Chund, Oree, Gungadhur, Rugha, and Nurkoo, formed part of this gang, and accompanied him for the same purpose; and that the prisoners Mohun, Buljeet, Mungul, Mohun, Rujjah, Nowulgeer, Motee, Luchmun, Nunda, Hitcha, Goordial, Davee, Medah, Sheodeen, Bhowaneedeen, and Soojan, belong to Mihrban's gang, and accompanied him this year for the purpose of robbery, and are therefore, as well as Bhoop and his gang just mentioned, liable to seven years imprisonment with hard labour, and ought further to be detained till they find security for their future good behaviour. The prisoners Oree, Peerbux, Baul, Chotay, Ramdeen, Kulleean, Bukhtour, Koolahul, Pershadee, Leeluck, Sookram, and Oree, appear to have acccompanied the two Sirdars above mentioned this year as servants; and as they could not have been ignorant of the description of people who employed them, they appear to me deserving of some degree of punishment, as a few years imprisonment. With respect to the degree of guilt which attaches to the women apprehended with the different parties, I am of opinion, that Mussummaut Emerty, Mussummaut Mereeah, Mussummaut Seedhnee, Mussummaut Madiah, Mussummaut Looroo, Mussummaut Rooply, Mussummaut Dhunee, Mussummaut Soobhuneea, attended Mihrban and his followers last year, and were privy to the Mukra Dacoity; and that Mussummaut Mahooree, Mussummaut Beeputeea, Mussummaut Mureeah, Mussummaut Jykoonwur, Mussummaut Sooknee, Mussummaut Choteky, Mussummaut Goinda, Mussummaut Punya, Mussummaut Desoree, Mussummaut Goura, Mussummaut Phoola, Mussummaut Purmeea, Mussummaut Khujooreea, Mussummaut Mekheea, Mus-

summaut Subjoe, Mussummaut Heereea, Mussummaut Muriah, Mussummaut Soogundheea, Mussummaut Ojbee, and Mussummaut Dhounee, accompanied the gang this year, and doubtless were aware of the nature of the expedition, and that they are deserving of short temporary imprisonment. Mussummaut Mundiah, Mussummaut Parbutee, and Mussummaut Khereeah, who are young and under the age of 15, are, I conclude, on that account, not liable to punishment; but under all the circumstances, I have directed that they be detained in custody till the final orders of the superior Court are received. The Court will observe, that in consideration of the reasons stated by the acting Magistrate in his address to me of the 9th ultimo, a copy of which accompanies this, I have been induced to stop proceedings against the prisoner Heera, as I perfectly concur with that gentleman in thinking he is deserving of a conditional pardon, and which I should have proposed for the sanction of the superior Court, with the view of obtaining his evidence on oath in the present trial, had there been time for the reference. I of course, concur in the acquittal of Shunker Gyawal, against whom there appears not the slightest proof. I have therefore issued a warrant for his release. The prisoner Buldee, appears insane, but as he has long been with the gang, I think he ought not to be released till some one comes forward to take charge of him. In conclusion, I have to remark, that almost the whole of the prisoners admit they are inhabitants of villages in the neighbourhood of Etwa, in Baraich, where some of them who call themselves *Jauths*, from the neighbourhood of Moorsaun in Allyghur, have lately settled, and which is of itself a very suspicious circumstance. Indeed, no doubt remains in my mind of their being, in general, desperate and dangerous characters, and I beg to suggest, that such of the prisoners as may be sentenced to tempory imprisonment of seven years and upwards be banished to Bengal, and that probably the most secure place for them would be the Allipore jail. I have only to add, that it appears to me, that the conditional pardon granted to Soorut Singh and Soudanee Kuhar should be confirmed."

The Court of Nizamut Adawlut, deeming it adviseable that a free pardon should be tendered to the prisoner Heera, and that previously to passing final sentence the evidence of that individual should be taken on oath, the Judge of Circuit returned to Gya in pursuance of the instructions of the superior Court. The result was, that the deposition on oath of that individual (Heera) not only did not in any material point differ from his former statement, but tended strongly to confirm the truth of it; and as he had thus conformed to the conditions prescribed by disclosing the facts and circumstances within his knowledge, the Judge of Circuit considered him fully entitled to a confirmation of the conditional pardon. In the interval, since the transmission of the trial originally, five of the prisoners in this case had died in jail, namely Bisram, Chumroo, Oree, Sookram, and Hoolas Khan.

The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoners Mihrban Singh, *alias* Seetaram, son of Chait Roy, Kala

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Singh (5), *alias* Kurraya Singh, Bundoo Singh (6), Nund Lal (8), Ramdeen (10), *alias* Sheodeen, Rambul (12), Bhageeruth (13), Kunhya (17), Thorce (18), *alias* Bisram, Mungul Singh (19), Budlo (20), Nowulgeer (24), Munsah (25), son of Nehaul, Lutchmun (27), Rawur Singh (35), Bhoop (38), Ramdeen (42), son of Puhlad, Dullah (46), Baul (49), Motee Singh (65), son of Bolakee, Beneepershad (73), Ramdeen (75), son of Jaunbaz, Durrea Singh (84), Geerd Haree Singh (91), Tek (93), Duljeet (99), Jeet Singh (107), *alias* Abjeet, Chotay Singh (109,) *alias* Kunhya, Bukhtour (148), son of Rumye, Hoolas (151), son of Torul, Mayru (152), Duhpelooah (155), Sudhaun (157), Hoolas (160), son of Bhooal, Oree (161), son of Zorawur, and Deena (162), in all thirty-six prisoners, on strong presumption of having been accomplices in a Dacoity, attended with murder and wounding, in which a large amount of treasure was plundered by the Dacoits; and likewise convicted on strong presumption the prisoners Sheoden (No. 2), *alias* Sooltan, Biram Singh (4), *alias* Bullee, Pirthee (22), Chumroo (31), Keerut (34), Zalim (39), son of Leela, Lekhye (40), *alias* Baboo, Goray Lal (44), Bhitchook (47), son of Torul, Muhlal Singh (51), son of Gyue Singh, Muhlal (59), son of Dhummee, Ummer Singh (62), Ishree (77), *alias* Keshree, Sheodeen (78), *alias* Muroah, son of Nukched, Sheodeen (81), son of Dhunee, Sawul Singh (86), Daveedeen Singh (87), Ramdeen (96), *alias* Goray Lal, son of Dhunee, Buljeet (98), *alias* Bulla, Oree (103), son of Pershaud, Nanhoo (108), Bacha (110), Bussawun (111), *alias* Tharoo, Mudaree (112,) *alias* Modhu, Bhitchook (113), son of Teka, Davee (7), *alias* Ramdeen, Beerbul (9), Mohun (11), son of Dulleep, Buljeet (14), son of Nowul, Burryah (15), *alias* Khemanee, Hurchund (16), Mohun Singh (21), son of Nudureea, Motee (26), *alias* Bhuggutram, Motee (28), son of Bheemul, Oree (30), son of Pundohee, Chotay (146), son of Mayru, Ramdeen (147), son of Dookhe, Kulleean (149), Bukhtour (150), son of Toree, Bhoop Singh (3), *alias* Munsa, Rujjah (23), Buldee (29), Munsah (33), son of Anundee, Nunda (36), Sookha (37), Hitcha (41), Goordial (43), *alias* Ramdeen, Davee Singh (45), son of Gunga Singh, Medah (48), Dhunput (50), Bhowanny Singh, (52), Mayree (53), Ramdial (54), Bukhtour (55), son of Mahungoo, Dyram (56), Doorga (57), Murdun (58), Hurgobind (60), Peerbux (61), Woodye Singh (63), Boojawun (64), Shewuk (66), Teekyte Singh (67), Madhow (68), Teetur (69), Jeeun (70), Kodge (71), Runjeet (72), Rambul (74), son of Buljeet, Jurryher (76), Jokhun (79), Oody (80,) Nusseeb (82), Horil, (83), Sheodeen Singh (85), son of Gunga Singh, Davee (88), *alias* Sawaram, Kadhay (89), Kunhye (90), Zalim (92), son of Kirpa, Khurga (94), Nanhoo (95), Bhowaneedeen (97), Jeeasoo (100), Buldeo (101), Teekchund (102), Gungadhur (104), Rugha (105), Nurkoo (106), Soojan Singh (114), Koolahul (153), Pershadee (154), Leeluck (156), Sookram (158), and Oree (159), son of Mayru, in all 94 prisoners, of conniving and abetting in the said Dacoity, and declared the whole of the said prisoners liable to discretionary punishment by *Seasut*, extending, in the instance of the prisoner Mihrban Singh, *alias* Seetaram, son of Chait Roy, to death,

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The following sentence was issued by the Nizamut Adawlut. The Court concur with their law officers in the conviction of the prisoner Mihrban Singh *alias* Seetaram, son of Chait Roy, as the head of a gang of robbers concerned in the abovementioned robbery; and seeing no circumstances in his favour to render him a proper object of mercy, sentence the said Mihrban Singh *alias* Seetaram to suffer death, by being hanged by the neck until he is dead, and order that his body be afterwards exposed upon a gibbet, at, or as near to the spot where the crimes were committed as circumstances may admit. The Court likewise concur in the conviction, as accomplices with Mihrban Singh *alias* Seetaram, of the prisoners Sheodeen (2), *alias* Sooltan, son of Munolla *alias* Choch Thaj, Kala Singh (5), *alias* Kurryoh Singh, son of Chunda, Bundhoo Singh (6), son of Busswant, Nundlal (8), son of Samunt, Ramdeen (10), *alias* Sheodeen, son of Hitcha, Rambul (12), son of Hurry Singh, Bhageeruth (13), son of Beerbul, Burryah (15), *alias* Khemanee, son of Sudola, Hurchund, son of Motee (16), Kunhya (17), son of Chunda, Budloo (20), son of Munsharam, Munsah (25), son of Nehaul, Rawur Singh (35), son of Mungree, Bhoop (38), son of Deep Chund, Lekhye (40), *alias* Baboo, son of Leela, Goray Lal (44), son of Tirkha, Bhitchook (47), son of Torul, Ramdeen (75), son of Jaun Baz, Ishree (77), *alias* Keshree, son of Bussunt, Sheodeen (78), *alias* Muroah, son of Neckched, Ramdeen (96), *alias* Gorah Lal, son of Dhunee, Buljeet (98), *alias* Bulla, son of Jodha, Nanhoo (108), son of Mihrban, Chotay Singh (109), *alias* Kunhya, son of Nyne Singh, Bacha (110), son of Lauljee, Bussawun (111), *alias* Tharoo, son of Doorjun, Mudaree (112), *alias* Modhee, son of Pamhoo, and Bhitchook (113), son of Teka, in all 28 prisoners, and sentence them each to receive thirty-nine stripes of the *corah*, and to be imprisoned in transportation beyond sea with hard labour for life. The Court further convict the four prisoners Keerut (34), son of Cheeda, Ramdeen (42), son of Puhlad, Dullah (46), son of Khurrugjeet, and Duljeet (99), son of Runjeet, of having been privy to, and conniving at the commission of the abovementioned Dacoity; and being satisfied that they are professed Dacoits of dangerous character, sentence them each to receive thirty stripes of the *corah*, and to be imprisoned in banishment with hard labour for the period of fourteen years, and not to be released on the expiration of their respective sentences, unless they furnish substantial security, in two sureties of 50 rupees each, to the satisfaction of the Court of Circuit, on the report of the Magistrate, for their future good conduct for the period of five years from the date of their discharge. The Court convict the prisoners Bhoop Singh (3), *alias* Munsa, son of Punye Singh, Biram Singh (4), *alias* Bullee, son of Munsa Singh, Davee (7), *alias* Ramdeen, son of Motee, Beerbul (9), son of Bunsee, Mohun (11), son of Dulleep, Buljeet (14), son of Nowul, Mungul Singh (19), son of Bheemul Singh, Mohun Singh (21), son of Nudureea, Pirthee (22), son of Gaujoo, Rujjah (23), son of Bhowanny, Nowulgeer (24), son of Chunda, Motee (26), *alias* Bhuggutram, son of Munny, Lutchmun (27), son of Heera, Motee (28), son of Bheemul, Oree (30), son of Pun-

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dohee, Munsah (33), son of Anundee, Nunda (36), son of Jey Singh, Sookha (37), son of Bisram, Zalim (39), son of Leela, Hitcha (41), son of Reekhye, Goordial (43), *alias* Ramdeen, son of Newazee, Davee Singh (45), son of Gunga Singh, Medah (48), son of Rutna, Baul (49), son of Somye, Dhunput (50), son of Bhuttoo Singh, Muhtab Singh (51), son of Gyne Singh, Bhowanny Singh (52), son of Betchoo Singh, Mayrey (53), son of Buddul Singh, Ramdial (54), son of Sonecheriah, Bukhtour (55), son of Mahungoo, Dyaram (56), son of Beejye, Doorga (57), son of Dyaram, Murdun (58), son of Motee, Muhlal (59), son of Dhummee, Hurgobind (60), son of Gungaram, Peerbux (61), son of Emambux, Ummer Singh (62), son of Munsa, Woodye Singh (63), son of Lootawun, Boojawun (64), son of Hitcha, Motee Singh (65), son of Boolakee, Shewuk (66), son of Ramjee, Teekytee Singh (67), son of Kuderooa, Madhoo (68), son of Bodee, Teetur (69), son of Bhagouleea, Jeeun (70), son of Kodge, Koodge (71), son of Bengally, Runjeet (72), son of Damodur, Beneepershad (73), son of Baljeet, Rambul (74), son of Buljeet, Jhurryher (76), son of Puhlad, Jokhun (79), son of Pultoo, Oody (80), son of Bisram, Sheodeen (81), son of Dhunee, Nusseeb (82), son of Jeet Roy, Horil (83), son of Gunga, Durrea Singh (84), son of Munsab, Sheodeen Singh (85), son of Gunga Singh, Sawul Singh (86), son of Bheekharee Singh, Daveedee Singh (87), son of Beekharee Singh, Davee (88), *alias* Sawaram, son of Goomanee, Radhay (89), son of Juggernath, Kunhye (90), son of Sooltan, Geerdharee Singh (91), son of Kishoor Singh, Zalim (92), son of Kirpa, Tek (93), son of Gopee, Khurga (94), son of Sooltan, Nanhoo (95), son of Mahungoo, Bhowaneedeen (97), son of Byjoe, Jeeasoo (100), son of Josee, Buldeo (101), son of Josee, Teekchund (102), son of Tillukram, Gungadhur (104), son of Nanhoo, Rugha (105), son of Nanhoo, Nurkoo (106), son of Jokhla, Jeet Singh (107), *alias* Abjeet, son of Nowul, and Soojan Singh (114), son of Dhunee, in all 76 prisoners, of going forth for the purpose of committing robbery; and considering the prisoners to be professed Dacoits of dangerous character, sentence them respectively to suffer imprisonment in banishment with hard labour for the period of seven years, and to be confined on the expiration of their sentences until they give substantial security in two sureties of 50 rupees each, to be approved of by the Court of Circuit on the Magistrate's report, for their future good conduct, for a period of five years from the date of their discharge. The Court also convict the prisoners Chotay (146), son of Mayree, Ramdeen (147), son of Dookhe, Bukhtour (148), son of Ramye, Kulleean (149), son of Bukhtour, Bukhtour (150), son of Toree, Hoolas (151), son of Torul, Mayree (152), son of Buldar, Koolahul (153), son of Toree, Pershadee (154), son of Chumroo, Duhpelooah (155), son of Sheobux, Leeluck (156), son of Buldee, Sudhaun (157), son of Pirtram, Oree (159), son of Mayree, Oree (161), son of Zorawur, and Deena (162), son of Poorye, in all fifteen prisoners, of going forth with a gang of robbers for the purpose of committing robbery, and sentence them each to be imprisoned in banishment with hard labour for the period of seven years. The Court concur with their law officers in the acquittal of the women

committed in this case, and accordingly direct, that the whole of them, from No. 115 in the list to No. 145, both inclusive, in all 31 prisoners, be immediately discharged. It appearing from the evidence, that the prisoner Buldee, son of Munsa, accompanied the gang of robbers, but that he is in a deranged state of mind, the Court direct that he be confined in the insane hospital at Patna. The Court remark, that the prisoner Sunker has been acquitted and discharged by the officiating Judge of Circuit, and that the prisoners Thoree (18), *alias* Bisram, Chumroo (31), Oree (103), son of Pershaud, Sookram (158), and Hoolas (160), son of Bhooal, are reported to have died in jail. The confessing prisoner Heera (32), son of Undaram, who has been admitted as king's evidence, and Soorut Singh, and Soudanee Kuhar, having conformed to the conditions of the pardon tendered to them under the orders of this Court, and having made a full disclosure of the circumstances within their knowledge, relative to the commission of the robbery, their pardons are confirmed, and written certificates under the seal of the Court are accordingly directed to be forwarded for delivery to them for their security, as far as regards the acts therein referred to. In the trial of this case, the Court of Nizamut Adawlut have remarked with satisfaction the zeal and intelligence of Mr. MacFarlan, the late joint Magistrate of Monghier, by whom the first clue was obtained in tracing the robbers; likewise the foresight and cordial co-operation of the Magistrate of Juanpore, Mr. Cracroft, and Captain Anquetil, of the 1st Battalion 22d Regiment, Native Infantry, on whose information the robbers were seized, when going forth on a second excursion; and also the activity of the police at Gya, in securing the persons of so large a gang, and the perspicuity and attention evinced by the acting Magistrate of Behar, in collecting and preparing the evidence for the commitment of the prisoners. The Court of Nizamut Adawlut have further remarked with satisfaction, the patience and trouble taken by the Judge of Circuit, Mr. Fleming, in comparing the large body of evidence recorded on this trial. Mr. MacFarlan, appearing to have been specially deputed by Government to trace the perpetrators of this robbery, ordered, that an extract from the proceedings of the Court on this trial be forwarded to the Chief Secretary to Government, together with a copy of Mr. Fleming's letter, of the 20th of March last, and its English enclosures, for the information of Government*.

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* For a statement of additional particulars relative to each individual prisoner in the above case, the witnesses by whom they were respectively recognized, &c. &c. See Appendix, marked A.

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CHOONA'S case.

MUSST. PEERBUKSH and others.
against
CHOONA.

Charge.—ADMINISTERING DELETERIOUS DRUGS, and THEFT.

Where a prisoner is charged with two or more distinct offences, the record of each trial should be kept separate, and a *futwa* should be taken on each individual case; not on the whole collectively.

THE prisoner Choona was committed for trial at the second sessions of 1821, for zillah Etawa, on three separate charges, differing in time and place; but much alike as to the nature of them.

In case No. 19 of the calendar, it appeared that the prisoner Choona, going into the *serai* of Holaus Rai, in the town of Etawa, on the 17th of May 1821, reported himself as a traveller, and in the evening sent a *bhutteearin* to bring to him Musst. Peerbuksh, a prostitute, with whom he was acquainted. The *bhutteearin* accordingly brought her. After smoking, the prisoner gave her (the prostitute) some sweetmeat and curds to eat, in which he mixed up a deleterious powder, which he kept by him for such purposes. Musst. Peerbuksh shortly afterwards lost her senses, when the prisoner took the ornaments from off her person, and made his escape. Musst. Moradbuksh, who remained with the prisoner and Musst. Peerbuksh some time, also partook sparingly of the sweetmeat, and retiring to another house, fell ill. Musst. Peerbuksh was found during the night by Musst. Sya, *bhutteearin*, lying senseless, and stript of her ornaments and most of her clothes: she did not fully recover her senses till seven or eight days had elasped. On the room being examined, a cloth was found left by the prisoner, containing a powder, which being sent in to the Magistrate, was declared by Doctor Clarkson to be a preparation of *dhuttoora*, or thorn apple. The prisoner being subsequently apprehended on the 1st of July 1821, by the Thanadar of Kurhul, Musst. Sya, *bhutteearin*, recognized him as the person who had sent for Musst. Peerbuksh in the *serai* of Etawa, on the night Peerbuksh was found senseless, and stript of her ornaments. Musst. Peerbuksh and Moradbuksh also fully recognized his person. The prisoner confessed, both at the Thana and before the Magistrate, that he did mix a powder, which he received for such purpose from a woman named Raceea, in the curds and sweetmeats he gave to Musst. Peerbuksh, with the intention of stealing her ornaments, when she should be senseless in consequence of eating it; and further, that when she became so, he did take from her person her ornaments, and fled with them. In the commitment (No. 20 of the calendar) it appeared that the prisoner Choona met with three boys on the 26th of June, 1821, who had gone to a *tope* for the purpose of eating mangoes. These boys had various silver ornaments about their persons. The prisoner was at that time seated in a *Muth*; but he got up, and going and giving them a pice, requested that they would purchase for him some articles to be used in his *poojah*. Returning to the village, they did so, and then rejoined the prisoner, who gave them each some sugar to eat, mixed, by the prisoner's own proved confession, with the same deleterious powder which he gave Musst. Peerbuksh to eat. The children, on receiving this mixture, tied it

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CHOONA'S case.

up in their clothes; but he made them untie it, and eat it before him, and then gave them each some water to drink; after which they became very confused, and could not go towards their homes. As night was setting in, the prisoner spread his own *chudder* or sheet on the ground, and told them to sleep there. Two of them laid down; but the third would only sit, and made several attempts to go home, but always returned again to the same place. When the night had somewhat advanced, Munsook, the father of one of the lads, having gone in search of his son in the neighbourhood of the *Muth*, called out, when the boy Nynesook recovering a little, ran to him; and from him Munsook heard, that the prisoner and the other two boys were in the jungle, to which he returned, and made the prisoner accompany him home, bringing the boys with them. This crime the prisoner confessed, and the two Luljeas and Nynesook (the boys who ate the mixture) corroborated the confession.

In commitment No. 21 of the calendar, it appeared that the prisoner having given some of the same powder to a relation of his, Musst. Butkeea, he stole her copper utensils, whilst she remained under its effects; from which she did not fully recover for many days. The proof in this latter case was presumptive only.

The law officer of the Court of Circuit declared the prisoner Choona convicted of having given a deleterious powder, mixed with sweetmeat and curds, to Musst. Peerbuksh to eat, knowing the effect it would have upon her, and of having stolen her ornaments from off her person whilst she lay senseless. He also convicted the same prisoner of giving some of the same kind of powder with some sugar to Luljea, Luljea second, and Nynesook, with the intention of stealing their silver ornaments, as soon as the powder should have its full effect upon them; and likewise of giving some of the same powder to Musst. Butkeea, and of having stolen two copper utensils from her whilst she was under its deleterious effects; and declared the prisoner liable to severe punishment by stripes and imprisonment, so that the ruling power should be satisfied that there was no longer fear of his again committing similar crimes. In this *futwa* the Judge of Circuit concurred; and on consideration of the nature of the crimes proved against the prisoner, and of the circumstance of his having been twice convicted by the Court of Circuit on other charges of theft, and sentenced to seven years imprisonment, from which he was released on the 1st of October 1820 only; he declared his opinion, that the prisoner was deserving of thirty *corahs* and perpetual imprisonment.

By three distinct *futwas* of the law officers of the Nizamut Adawlut, the prisoner was declared convicted of having administered a deleterious powder, with sweetmeat in three different cases, first to Musst. Peerbuksh, secondly to three boys, two named Luljea, and Nynesook, and thirdly to Musst. Butkeea, with the intention of committing theft, and actually committing theft in the first and third case. The Court (present W. Leycester) fully concurred in the conviction of the prisoner in the three cases, and sentenced him to receive thirty stripes with a *corah*, and to be imprisoned with hard labour for life in the jail

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at Allipore. With reference, however, to certain irregularities which were perceived in the mode of conducting this trial, the Court passed the following order. "The Court notice, for the observation of the Circuit Judge, that in two of the cases in question, a distinct *futwa* has not been taken as it ought to have been; under each of which the Circuit Judge's assent, if he agreed with it, ought to have been recorded, and the record of each case ought to have been kept distinct, and each of the trials should have referred to the one last tried, and that should include in its final order all the three cases.

1821.
Dec. 31st.
Case of ANWAR and others.

KISHEN MOHUN and PRANKISHEN, *against* ANWAR and eight others.

Charge—DACOITY.

A law officer having declared in his *futwa*, as a ground for the acquittal of a prisoner, that he might have concealed his knowledge of a Dacoity from fear, and that it was inexpedient to punish him lest it should deter other offenders from giving information, the Court held that he had exceeded his duty, and that he should not have referred to matters having no connexion with Moohummudan law.

THE prisoners Anwar (1), Jaun Mahomed (2), Futtih Mahomed (3), Pokah (4), Sheikh Horoy (5), Keamoodeen (6), Saduck Baker (7), Horoy Bhudder (8), and Bhagoy (9), were tried at the 1st sessions of 1821 for zillah Tipperah, on the charges of having attacked and plundered the houses of the two prosecutors, who were brothers. It appeared in evidence, that about midnight on the 15th of Cheit, a gang of robbers, armed with swords, spears, and bludgeons, attacked the house of Pran Kishen, in the village of Mustaphapore. Six of them entered the house, and having beaten Pran Kishen till he became senseless, they stript his wife and daughter of their gold and silver ornaments, and took also some copper and pewter utensils and clothes, to the value altogether of 50 or 60 rupees. The gang next proceeded to Kishen Mohun's house, who had taken the alarm, and had opened his chest, with the intention of carrying away and concealing his valuables. As, however, he saw the robbers approaching, he ran away into the jungle with his wife and two children, leaving every thing behind. He stated, that the gang consisted of twenty or twenty-one in number; that they carried lights, and that they took seventy-three rupees in cash and household utensils, ornaments of silver, &c. to the amount of above 300 rupees in the whole, and that they remained about one *ghurree* in his house. Neither of the prosecutors knew any of the Dacoits. Their dwellings were surrounded on three sides by other dwelling houses, with a plain to the south. The witnesses Sookdeb, Gungaram, and Kishnoo resided in the same village with the prosecutors, and were alarmed by the noise on the night of the robbery. They saw the Dacoits attack the houses of the two brothers. They stated, that they began to alarm and assemble the villagers; but before the people could be collected, the robbers had gone away, after remaining two *ghurrees* in the dwellings of the prosecutors. A person named Tupisram the next day gave information of the Dacoity to

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the police Darogha of Turlah, and the prosecutor Kishen Mohun preferred a complaint at the Thana on the 31st March. The Darogha, attended by the witness Birahim Burkundaz, who appears to have been the chief agent in discovering the robbers, and other persons belonging to the Thana, went to the spot the following day, and assembled the neighbours in order to make enquiries respecting the robbery. The witness Beraheem stated on the trial, that towards evening, the Darogha, attended by the inhabitants of the village, went to the neighbouring bazar of Ramchunderpoor, where he was engaged till the next day in making enquiries, and desired the witness to use his exertions for the detection of the offenders. The witness, suspecting that the prisoner Sheikh Horoy, who resided in the plain lying to the southward of the prosecutor's dwelling, knew something of the matter, as the Dacoits must have passed his house, called him aside, but at first he denied all knowledge of them. He then called aside Shitab, a witness in the present trial, who lived near Horoy, and who informed him, that eight days previous to the robbery, two men on horseback came to Horoy's house, and remained there a night, and on Shitab's asking Horoy who they were, he answered that they were friends of his from Hurrypoora, and that they had come to sell their horses at the bazar of Ramchunderpoor. Horoy being again called, acknowledged that two horsemen had come to his house on the day mentioned by Shitab, and one of them was named Kelaram, who was known to the witness Beraheem as a notorious bad character. Shitab then said he had seen the same two persons come to Horoy's house a year before, and they also came to his house on foot on the Monday before the Dacoity, and spent the night with him, and further that the strangers went the next morning to the bazar of Ramchunderpoor, and he saw Horoy follow them. Horoy being closely questioned the next day, confessed that on the night of the robbery, Kelaram and the prisoner Keamoodeen came to his house, and took him to a *nullah* which is near it, where he saw about eight men armed with swords, spears, and clubs; that he asked who they were, when his friend Kelaram told him they were going to rob the prosecutors' houses, and asked in which house the chest was; that he (Horoy) answered, in Kishen Mohun's house; that they asked him to accompany them, which he refused, and they then threatened, that if he impeached them he should be put to death. Keamoodeen, who was among the villagers, was then apprehended. The following day Horoy's examination was taken in writing by the Darogha, and being confronted with the prisoner Keamoodeen, the latter confessed that he had been engaged in the robbery with Futtih Mahomed, Anwar, Pokah, Jaun Mahomed, Kelaram, Baker, and others whose names he did not know. He afterwards said, that he and Horoy went with the other robbers as far as the tank near the prosecutors' dwelling, but had returned from thence. He then went with the Darogha to his brother-in-law Basir's house, and produced some of the stolen property from the cow-house. In consequence of the information furnished by Keamoodeen, the police officers next apprehended Futtih Mahomed, Pokah,

LIBRARY OF THE

1821.

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and Jaun Mahomed at a place called Ramkishenpoor, and part of the stolen goods were found in the houses of the two former. All three confessed being concerned in the Dacoity, and were sent up to the sudder station, together with Shekh Horoy, Keamoodeen, and Basir since deceased, where they all, with the exception of Basir, made the same confessions as they had made before the Darogha. The disclosures made by the above named prisoners enabled the police officers to apprehend successively the prisoners Baker, Bhagoy, and Horoy Bhudder, in whose houses stolen property was found, as well as Anwar, Kelaram *alias* Phela, and others of the gang, who were not committed for trial. Anwar confessed being concerned in the robbery before the Darogha, and also in presence of the Magistrate. But the prisoners Baker, Bhagoy, and Horoy Bhudder, although they confessed before the Thanadar, denied the charge when examined by the Magistrate. On the trial before the Court of Circuit, all the prisoners denied the charge. The witness Shitab corroborated the evidence of Biraheem Burkundaz, and the rest of the witnesses for the prosecution deposed to the confessions of the prisoners before the Darogha and Magistrate, and the discovery of the plundered property in the houses of the five prisoners mentioned above. With respect to the defence of the prisoners, Anwar alledged that his confession was extorted, and that he was keeping watch at his own village during the night of the robbery. The latter allegation was disproved by his own witnesses. Jaun Mahomed pleaded in defence, that his confession was extorted by violence. Futtih Mahomed, Pokah, Keamoodeen, Horoy Bhudder, Bhagoy, and Baker denied having made any confessions. Their witnesses deposed to nothing material.

The law officer of the Court of Circuit declared all the prisoners convicted, with the exception of Sheikh Horoy. Six of the gang who were apprehended, and confessed the robbery before the Darogha, were not committed for trial. Their names were Kelaram *alias* Phela Chung, Phedoo Chung, Sheebram Chung, Sunker Haree, Allah Bukhsh, and Zukee Gaien. The Judge of Circuit expressed his opinion, that these persons ought to have been committed, especially Kelaram, who appeared to be the chief of the gang. He stated, that he had some intention of directing the Magistrate to commit them, but that on further consideration he resolved to await the decision of the Nizamut Adawlut respecting them. He observed, that the two cases constituted in fact but one robbery, as the two prosecutors were brothers, residing in adjoining houses, within the same enclosure. He sentenced eight of the prisoners on the 1st charge to imprisonment for life in transportation and 39 stripes of the *corah*, subject to the approval of the Nizamut Adawlut, according to section 4, Regulation VIII. of 1808. The remaining prisoner, Sheikh Horoy, who was acquitted by the law officer's *futwa*, he ordered to be detained in jail until the final orders of the Nizamut Adawlut were received, as he conceived him to have been the *goinda* of the gang, and an accomplice in the robbery, and that he ought not to be released without security for his good behaviour.

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The *futwa* of two of the law officers of the Nizamut Adawlut convicted all the prisoners, except Sheikh Horoy, of having been accomplices in Dacoity, and declared them liable to discretionary punishment by *Acoobut*. The Court of Nizamut Adawlut (present W. Leycester) fully concurred in their conviction, and confirmed the sentence of 39 *corahs*, and imprisonment with hard labour in transportation beyond sea for life, passed upon the prisoners by the officiating Judge of Circuit. The prisoner Sheikh Horoy was convicted by the same *futwa* of having been an accessary before the fact to this Dacoity; and the Court agreeing in the *futwa* with respect to that prisoner also, sentenced him to receive 25 stripes of the *corah*, and to be imprisoned with hard labour for 7 years. With regard to this prisoner, the Court observed, that the law officer of the Court of Circuit (Ali Tukee), after stating that he had confessed holding counsel with the Dacoits, had declared him entitled to his release, apparently on the ground that substantive evidence of his guilt was not adduced, (the absence of which is not a ground of acquittal, if there be otherwise sufficient evidence to convict,) and, as it would seem, principally because it was possible that he might have concealed his knowledge of the Dacoity from fear, and that it was inexpedient to punish him, as it might prevent the police obtaining similar information in future. With regard to the question of possible fear and public inexpediency, the Court observed, that the law officer had abandoned the line of his duty, in alluding to either; and that he was bound to find a verdict without reference to matters which have no connexion with Moohummudan law. The Court desired that the Court of Circuit would communicate these observations to Ali Tukee. The Court perfectly concurring with the Judge of Circuit, that Kelaram *alias* Phela Chung, Phedoo Chung, Sheebram Chung, Sunker Haree, Allah Buksh, and Zukee Gaieu, ought to have been committed on their Thana confessions, and some of them being also implicated by the confessions of the prisoners in this trial, desired that the Court of Circuit would direct the Magistrate to commit them accordingly.

1822. Feb. 4th. KHEALEERAM'S case.

SOOKHLAL, *against* KHEALEERAM.

Charge—MURDER.

A prisoner convicted of murder, calling himself 14 years of age, and reported by the Circuit

THE prisoner Khealeeram was charged, in the calendar, with the murder of Nunda, aged from 4 to 6 years, for the sake of his ornaments. The deceased was missing from his father's house, from 12 o'clock A. M. till the evening of the 12th of July. The houses in the vicinity being searched, when the people so employed came to the prisoner's house, with torches, he was seen to leap from out of it, and run away. They pursued him, and took him to the Thana, where he

1822.
KHEALEERAM'S case.

Judge to appear not more than sixteen, sentenced to perpetual imprisonment.

confessed that he had killed the child, and buried the body in the bed of the Chumbul Nuddee. Next day, he pointed out behind his own house, in a ruined hut, the ornaments for the feet and neck worn by the deceased. The body was found in the Chumbul by the witnesses who appeared before the Court, and who were attracted to the spot by the offensive smell. The corpse was partially covered with earth, stones, and branches of trees. It was fully proved to be that of the deceased. The prisoner had not been able to take off the ornaments from the wrists, and these were found on the body. The death had evidently been effected by blows from some heavy substance. The prisoner pleaded not guilty before the Magistrate and the Court of Circuit; but the witnesses indicated by him to prove an *alibi* were not to be found. The prisoner, on trial, stated himself to be but fourteen years of age; and the Judge of Circuit, in referring the case, stated, that he actually did not appear to have passed sixteen. The Judge of Circuit agreed with his law officer in the opinion of the prisoner's guilt, and stated, that he left the prisoner to the justice, and perhaps, on account of his youth, to a mitigated sentence, of the superior Court. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the murder charged; but stating *Kissas* to be barred in consequence of his youth, declared him liable to *Deeut*, or for the sake of example, liable to discretionary punishment by *Tazeer*. The Court of Nizamut Adawlut (present W. Leycester and S. T. Goad) concurred in the conviction of the prisoner; but observing that the Circuit Judge stated, that the prisoner did not appear to have passed his sixteenth year, and that the prisoner admitted himself to be only fourteen years of age, sentenced him to perpetual imprisonment, in the Allipore jail.

1822.
Feb. 23d.
MUSST. MUNJOO'S case.

GOVERNMENT,
against
MUSST. MUNJOO.

Charge—MURDER.

Case of a woman killing her own infant in a fit of passion by cutting its throat, and afterwards attempting to commit suicide: *futwa Deeut*, sentence death.

THE prisoner was tried at the second sessions of 1821, for zillah Dinagepore, charged with the murder of her own daughter, an infant only two months old.

It appeared from the evidence adduced in the case, that the prisoner was proceeding to her father's house with her child in her arms, when she was overtaken by her husband, who forced her to return home with him; and that, being disappointed at not seeing her family, she, in a fit of passion, cut her child's throat, and was in the act of committing suicide, when she was prevented by her brother-in-law, named Dola, who snatched the knife from her, and threw it down on the ground. Her husband and some of their neighbours immediately came up, and saw the child lying dead with its throat cut, and the prisoner standing near the corpse with her throat slightly

1822.
MUSST. MUNJOO'S case.

wounded. Before the Darogha she confessed the murder, and asserted, that some time past, her husband had refused to partake of the food dressed by her, which vexed her, and she was proceeding to her father's house, when her husband met her on the road, made her return home with him, and cut her throat with a knife, with which she in a fit of passion destroyed her own child. The prisoner repeated her confession before the Magistrate, and on both occasions her confessions appeared to have been voluntarily given. The law officer of the Court of Circuit, in his *futwa*, declared the prisoner convicted of the killing, and liable to suffer punishment by *Deeut*, and that had the deceased been any other than her own child, she would be liable to suffer punishment by *Kissas*; concurring with which *futwa*, the Circuit Judge transmitted the proceedings for the final order of the superior Court.

The first *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner, and declared her liable to *Deeut*; and the second *futwa* stated, that if the child had not been the prisoner's daughter, she would have been liable to *Kissas*. The fourth Judge of the Nizamut Adawlut (J. Shakespear) considered the prisoner's guilt to be fully established, and was of opinion, that she should be sentenced to capital punishment. The officiating Judge (C. Elliott) concurring in this opinion, she was sentenced to be hanged accordingly.

1822.
Feb. 28th.
MUSST. KURWYA'S case.

GOVERNMENT,
against
MUSST. KURWYA.

Charge—MURDER.

Case of a woman tried for throwing herself and her two children into a river, where the latter were drowned. Her Thana confession being the chief evidence against her, and that containing an expression which might be

MUSST. Kurwya was charged with the murder of her two infant children, by drowning them, and tried for that offence at the first sessions of 1822, for zillah Cawnpore.

The case was as follows. The prisoner being seen about gunfire, on the morning of the 6th November, 1821, struggling in the river Ganges, under Nujjuf Ghur, a hue and cry was raised, that some one was drowning, on which two persons, Cheetooa and Doolbureea, threw themselves into the river, and swimming towards her, brought her on shore. The prisoner being taken to the Thana, is stated to have there confessed, that in consequence of repeated quarrels with her husband, she went down to the river, with her two children, Gunnesooa, 4 years old, and Musst. Bhoaree, aged one year and six months, and taking them in her arms, threw herself and them into it; that she did not know how she was taken out, nor what became of the children. It was not ascertained that any person saw the prisoner leap in the river, or on her way to the river. In her examination by the Magistrate, she stated, that she accidentally slipt into the river, and did not know whether or not the children followed her; and before the

1822.

MUSST. HURWYA'S case.

Court of Circuit, she alleged, that she threw herself into the river in a fit of anger, leaving her children on the shore. The bodies of the children were not found, neither did it appear that they were seen in the river. The confession of the prisoner, as taken at the Thana, was proved by four witnesses.

construed to mean that she accidentally fell into the river, the Court held that she was entitled to the benefit of the favourable interpretation.

The law officer of the Court of Circuit convicted the prisoner of the wilful murder of her two children, Gunnesooa and Bhoaree, by drowning; but declared *Kissas* was barred by reason of the prisoner's being the mother of the two children drowned, and that she was only subject to *Deeut*.

The Judge of Circuit concurred with his law officer in the conviction of the prisoner, on her own proved confession; but it appearing to him, from the circumstances of the case, that the prisoner's intention was more to give up her own life than to take that of others, he begged to recommend her to mercy.

Acquitted accordingly.

The *futwa* of the law officers of the Nizamut Adawlut was similar in purport to that of the Court of Circuit. The fourth Judge of the Nizamut Adawlut (J. Shakespear) observed, that the evidence against the prisoner turned chiefly upon her confession at the Thana, which she denied before the Magistrate and before the Court of Circuit; that the witnesses to the Moofussil confession deposed, that the prisoner confessed having cast herself and children into the river intentionally; that the confession was in *Hinduee*, and in the first part she stated "*ap se gir puree*," which expression he (the fourth Judge) did not consider to imply an intention of throwing herself in; that the latter part of the confession might be construed to mean so, but that the expressions used were rather dubious; and as there was no other evidence, he was of opinion, that the authority given by the second *futwa* of the law officers (to inflict a capital sentence) should not be acted upon. Indeed, he thought the evidence insufficient for conviction. The officiating Judge (C. Elliott) observed, that, although from the tenor of the latter part of the prisoner's Thana confession, it was apparent that the writer understood her to have previously confessed that she had intended to drown herself and her children, yet the wording of her answer to the second question put by the police Darogha evidently admitted of the interpretation, that she had fallen into the river; and that, as there were no witnesses to the fact, and the proof of the intention rested solely on this confession, the Court were bound to interpret it in the way most favourable to the prisoner. He therefore concurred in the propriety of ordering that Musst. Kurwya should be immediately discharged. The prisoner was ordered to be released accordingly.

1822.
Feb. 28th.
LURRYE CHUNG'S case.

MUSST. LULTEA, *against* LURRYE CHUNG.

Charge—MURDER.

THE prisoner was charged with the murder of Needa Chung, husband of the prosecutrix, and tried for that offence, at the 1st sessions of 1822, for zillah Sylhet. About two months before the murder, a *parun*, or bamboo trap for catching fish, belonging to the deceased, was lost or stolen from a *jheel*. He searched for it every where, but in vain. Some weeks afterwards, he happened to see it in the house of a person named Paugul Chung. The deceased claimed it, and demanded where the other had found it, when Paugul Chung said, that the prisoner had put it there. On this the deceased went home, and mentioned the circumstance to the witness Ram Ghose his Talookdar, who advised him first to take possession of the *parun* in the presence of witnesses, and afterwards to take steps about the theft. The day after this, the deceased set off for Paugul Chung's house, for the *parun*, but was never seen or heard of from that hour. His wife went about searching for him; and some days afterwards, understanding from several persons that they had seen the prisoner with a *dao* in his hand on the day the deceased was missing, proceeding after him in the same direction, (which was proved on the trial,) she suspected the prisoner, and gave in a petition to the Thana, accusing him of having made away with her husband, on account of what he had heard from Paugul Chung, about the prisoner having deposited the stolen *parun* in the house of that person. The Thana Mohurrir then apprehended the prisoner, who made a confession to this effect. "That the witness Ram Ghose, Talookdar, (before noticed) had beaten the deceased, and desired him (the prisoner) to beat him also; that thereupon he (the prisoner) gave the deceased a cut in the side with his *dao*, and beat him with his fists, of which treatment the deceased died on the spot." The day after making this confession, the prisoner showed the spot where the body had been left, in a shallow nullah full of weeds, where it was found quite destroyed, and nothing but the bones remaining, so that it was impossible to recognize it. The prisoner was then forwarded to the Magistrate, before whom he made, six days afterwards, the same confession as he had done in the Moofussil. Before the Court of Circuit, he adhered to what he had before asserted respecting the Talookdar, but denied having himself been concerned in the murder. There was nothing in the case to warrant the suspicion that either of the confessions had been obtained by unfair means. It seemed to the Judge of Circuit clearly established, that the prisoner murdered the deceased to prevent his bringing forward against him the theft of the *parun*, about which the prisoner was aware the deceased had heard from Paugul Chung. The Judge of Circuit observed, moreover, that the improbable and unaccountable

The Court observed, that a wife should not be called upon to give evidence against her husband, except in a case of urgent necessity.

1822.
LURRYE CHUNG'S case.

story the prisoner had told of Ram Ghose did not appear worthy of the slightest credit; and that the prisoner's object in implicating him was either to lessen his own culpability, or in revenge for the advice that person gave the deceased to take proper steps about the recovery of the *parun*. The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of wilful murder, and liable to *Kissas*, to which finding the Judge stated he was aware of no objection. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the murder charged, and declared him liable to discretionary punishment by *Seasut*, extending to death. The Court (present J. T. Shakespear and C. Elliott) concurred in the conviction of the prisoner, and seeing no circumstances in his favour to render him a proper object of mercy, sentenced the said Lurrye Chung to suffer death. The Court observed, that in this case Musst. Ajil, wife of the prisoner, was called to give evidence against him, though her testimony was wholly unnecessary; that the practice of summoning such a near relation of a prisoner as a witness for the prosecution, excepting in case of urgent necessity, is considered highly objectionable; and the Court therefore directed, that such practice should be discouraged by the Court of Circuit in future.

1822.
March 6th.
WUZEER'S case.

GOVERNMENT, *against* WUZEER.

Charge—RIVER DACOITY.

The prisoner convicted of a river Dacoity, unattended with aggravating circumstances, but sentenced to 39 *corahs*, and imprisonment in transportation for life, in consideration of his being a *Chowkeedar*, and his having previously stolen the boat on which the

THE prisoner was tried at the 1st sessions of 1822, for zillah Sylhet.

The circumstances of the case, as they appeared in evidence, were as follow. About the end of the month of Sawun, the witnesses Ram Mohun, Rampersaud, Bishenpersaud, and Rubidoss, set off together in a small boat, and four days afterwards reached a bazar called Beka Take, where they secured their boat for the night. Between 10 and 11 o'clock at night, their boat was attacked by Dacoits, who plundered them of all their money to the amount of 150 rupees, besides 10 *cahuns* in *couries*. The Dacoits came in two small boats, and the water being two or three feet deep, the four persons above mentioned leapt out of their boat, and laid hold of one of the boats belonging to the Dacoits, which they secured with one of the Dacoits on board it, the rest having decamped. This man they bound, and prevented his escape; and, as the others were running away, he called out these words, "Oh Wuzeer uncle, I am caught." Shortly afterwards, the Dacoits returned, and forcibly rescued their companion. Among them was the prisoner, who principally exerted himself in letting the man loose: while he was doing which, the people who had been robbed laid hold of him, and secured him; when all the rest of the Dacoits ran off, leaving one of the boats behind them.

1822.
WUZEER'S case.

Dacoity was committed.

The following morning the prisoner was taken to the Thana; and being asked what account he had to give of himself, said, that the evening before, he had gone to the bazar in a boat to buy liquor, when hearing the uproar, he returned to the river side; but missing his boat, and concluding it had been taken away by Dacoits to commit a robbery, he repaired to the spot where the noise was, and going to the party, was taken up, and supposed to be one of the Dacoits. Before the Magistrate, the prisoner varied in his account, stating, that he was in his house a short distance off, when hearing the noise, he went to the spot, and was laid hold of. On the trial he pleaded, that he was *Chowkeedar* of a village, about half a mile distant from the spot where the Dacoity was committed, and that he went to see what was the matter, and so was apprehended. It was fully proved, that the boat (on board of which some of the Dacoits were when they made the attack) which they left behind them, and which boat the prisoner at the Thana called his own, had been stolen or taken away three days before the Dacoity, from a *ghaut* six miles off, and that it belonged to a witness named Anoopram. It was also proved, that the prisoner's house was close to that *ghaut*, and that the villages where he acted as *Chowkeedar* were at least four miles distant from the spot at which the Dacoity occurred. The various accounts, therefore, given by the prisoner, all appeared improbable and false. The boat he called his own was proved to have belonged to another person, from whom, it might be presumed, the prisoner, with others, stole it for the purpose of committing Dacoity; and it was quite impossible for him to have heard the uproar, if (as he stated before the Magistrate) he was in his own house at the time, which was six miles off, or within the range of the villages where he performed the duties of *Chowkeedar*, (as he declared before the Court of Circuit,) which were not less than four miles distant. The manner of his apprehension, and the words made use of, "Wuzeer uncle," by the other Dacoit who had been first secured, combined with the different and unaccountable statements the prisoner had made, left no room, in the opinion of the Judge of Circuit, to doubt that he was one of the Dacoits who robbed the boat; and as the *futwa* of his law officer corresponded with this opinion, he passed upon the prisoner the prescribed sentence of 39 stripes of a *corah*, and imprisonment in transportation beyond sea for life. The *futwa* of two of the law officers of the Nizamut Adawlut declared the prisoner convicted on violent presumption, and liable to discretionary punishment by *Acoobut*. The Court of Nizamut Adawlut (present J. Shakespear and C. Elliott) concurred in the conviction; and although the Dacoity was not attended with any aggravating circumstances, yet, as the prisoner was a *Chowkeedar*, and there was reason to believe that he had previously stolen the boat on which he went to commit the Dacoity, the Court considered him deserving of the full punishment prescribed for the offence, and confirmed the sentence passed on him by the third Judge of the Dacca Court of Circuit.

1822.

March 13th.

GHOOREE BRAHMIN'S case.

SOOKHLAL,
against
GHOOREE BRAHMIN.

Charge—MURDER.

On a conviction of murder, the Circuit Judge recommended that transportation should form part of the sentence, but this recommendation rejected by the Nizamut Adawlut, and sentence passed of imprisonment for life in the Allipore jail.

THE prisoner was tried at the 2d sessions of 1821, for zillah Juanpore, being charged with the murder of the prosecutor's uncle. The prosecutor stated, that one night in the month of Phagoon 1228, F. S. his uncle Busah and himself went to sleep, about 10 *biswahs* distant from each other, in the village of Duttyan, Pergunnah Gheswah; that he awoke about 5 o'clock, and going to awaken his uncle, found him dead, and on taking off the cloth that was over him, discovered a wound on the right side of his head, about three inches long and one and a half deep; that suspecting the act had been committed by the prisoner, in consequence of a previous quarrel respecting the produce of some *muhwah* and mango trees, he went to the prisoner's house, and found that he and his family had absconded, which confirmed the suspicion he entertained; that at daylight he gave information of the murder to Bussunt Singh, the proprietor of the village; and that a few days after, the prisoner was apprehended in an *urhur* field in the village, by a servant of the proprietor; that he supposed the wound to have been inflicted with a *gundasa* or hatchet, and that he heard that one had been found in the prisoner's house. The prisoner confessed having committed the murder, both at the Thana and before the Magistrate, but denied it before the Court of Circuit. His confessions, however, were proved by the witnesses in whose presence they had been taken. The *futwa* of the law officer of the Court of Circuit declared the prisoner guilty of the murder on violent presumption, and the Circuit Judge submitted that he should be sentenced to transportation for life. The second Judge of the Nizamut Adawlut (C. Smith) thought that the confessions at the Thana and before the Magistrate, coupled with the circumstances of the prisoner's flight and concealment, and what the prosecutor had alleged of a previous quarrel between his deceased uncle and the prisoner, were sufficient for the prisoner's conviction; but he was of opinion, upon the whole, that the prisoner should be sentenced to imprisonment for life, and not, as suggested by the Circuit Judge, in transportation, but in the jail at Allipore. The officiating Judge (C. Elliott) concurring in this opinion, and the *futwa* of the Nizamut Adawlut having declared the prisoner convicted and liable to discretionary punishment by *Seasut*, a sentence was issued conformably to the opinion of the second Judge.

BUKSH,
against
KHOONWA and TIMLAH.

Charge—Highway Robbery.

1822.
March 13th.
Case of Khoonwa and Timlah.

Of two prisoners, one snatched a necklace from an old woman in the day time on the high road, who fell from the pull, but sustained no injury; while the other prisoner stood by. Held that this does not amount to the crime of robbery by open violence, as defined in the Regulations.

This case was tried at the 2d sessions of 1821, for zillah Juanpore. It appeared in evidence, that the grandmother of the prosecutor was returning to her home in Buchubkea, from Mahowl, between 12 and 1 o'clock in the day, when she was attacked by two persons, and robbed of a silver *hunslee*, valued about seven rupees. Bhoda Aheer having seen the *hunslee* in the possession of Khoonwa, he was apprehended on his information, and acknowledged at the Thana having committed the crime, and produced the *hunslee*. He also accused Timlah of being an accomplice, who was accordingly apprehended, and he also confessed. Before the Court, Khoonwa confessed having taken the *hunslee*; but stated, that he was alone when he committed the crime; and Timlah stated, that he was in company with Khoonwa at the time when he took the *hunslee*; but in his defence, he denied being an accomplice, and alleged that he had acknowledged at the Thana at the instigation of Khoonwa, and in the Court from fear. The *futwa* of the law officer of the Court of Circuit declared the prisoner Khoonwa convicted of highway robbery, and Timlah of being an accomplice. They were accordingly sentenced to the prescribed punishment, under the Regulations; but the Circuit Judge, in referring the case, suggested that the punishment should be restricted to 14 years imprisonment with labour, and 20 stripes with a *corah* each.

The *futwa* of the law officers of the Nizamut Adawlut was similar in purport to that of the Court of Circuit. On a consideration of the proceedings in this case, however, the 2d Judge of the Nizamut Adawlut (C. Smith) recorded his opinion to the following effect. "It appears to me that this reference should not have been made. It is proved, that of the two prisoners, one, in the day time, on the highway, snatched a *hunslee* from the neck of the prosecutor's grandmother, while the other stood by at a small distance. It does not seem that they were armed, and the only violence suffered was the old woman's falling down, and having a slight pain in her loins in consequence for a short time. The Judge, therefore, was competent to pass and order execution of sentence under clause 5, section 8, Regulation XVII. 1817, and he himself recommends a punishment short of the *maximum* which that clause prescribes. I propose, therefore, that the proceedings be returned, with a letter of instructions that the 2d Judge of the Benares Court of Circuit, having himself passed sentence under the Regulation above cited, and issued his warrant for its execution, report the case in the usual way, as one of prisoners punished without reference to the Nizamut Adawlut." The 4th Judge (J. Shakespear) concurring in this opinion, the proceedings were returned accordingly.

1822.
Mar. 30th.
BHOLA GHAZEE'S case.

GOVERNMENT,
against
BHOLA GHAZEE.
Charge—PERJURY.

A false deposition taken by the *Omla* of a Magistrate, not in presence of the Magistrate or of his assistant, held to be not punishable under the Regulations.

THE circumstances of this case were as follow. The prisoner, when examined by the *Omla* of the joint Magistrate of Barasut, as an evidence, on the 25th of January, 1822, in a case of affray, deposed to having witnessed it, and stated the circumstances that occurred. On the 15th February, when he was called up before the joint Magistrate, and examined, he admitted that the evidence he formerly gave was false, and that he was prevailed upon by the plaintiff in that case to give the deposition that he had formerly made. Two witnesses proved that he admitted that his first evidence was false, and on this the law officer of the Court of Circuit convicted him of perjury, and declared him liable to discretionary punishment by *Tazeer*. In submitting this case to the Court of Nizamut Adawlut, the Judge of Circuit accompanied it by the following observations. "I differ from this finding. The prisoner does not appear to be in any way connected with the plaintiff in the case of affray: he is any thing but a practised offender; in fact he appears to be more of a simpleton than any thing else. The witnesses examined by this Court were not present at either of the examinations of the prisoner in the zillah Court. They depose to his having been in a very great state of alarm when they saw him, that is, after the last examination. In such a state, I am not surprised at his making the statement upon record, and I attribute it to what the prisoner before me admits had induced it, the state of alarm he was in. I am therefore of opinion, that he should be released. Should the superior Court be of a different opinion, I beg leave to observe, that the prisoner is an old man, and not a fit subject for corporal punishment."

The prisoner was declared by the *futwa* of two of the law officers of the Nizamut Adawlut to be not convicted of the crime of perjury, and to be entitled to release. The Court of Nizamut Adawlut, (present S. T. Goad and J. Shakespear,) not being satisfied that the evidence given by the prisoner before the *Omla* of the Magistrate on the 25th of January was *false*, or of the truth of the prisoner's admissions that it was so, in his examination before the joint Magistrate on the 15th of February, concurred in the *futwa*, and directed that the prisoner should be immediately discharged. The Court observed, that the evidence given by the prisoner on the 25th January, even if proved to be false, would not amount to perjury, according to the provisions of section 4, Regulation II. of 1807, the deposition given by him not having been taken before a Court of judicature, Magistrate, or other authorized public officer. The Court further remarked, for the joint Magistrate's information and future guidance, that according to the Court's circular order of the 12th December 1809, whenever a Magistrate or his assistant may be under the necessity of employing any of the native officers in taking depositions of prosecutors or witnesses, such depositions should invariably be

taken in some part of the *cutcherry* in which the Magistrate or his assistant may be sitting, and not in a separate building, or in the absence of the Magistrate or his assistant; and that this rule did not appear to have been observed in the present instance. The Court also remarked an irregularity, in recording both the examinations of the prisoner on the same paper, contrary to the provisions of section 15, Regulation IX. of 1793, and that the three witnesses who were called in to attest them, were not present when either of those examinations were reduced to writing, but attested the translations of them both on the 15th of February, on the acknowledgment of the prisoner that he had given them.

1822. BHOLA GHAZEE'S case.

GOVERNMENT,
against
KHOOSROO.

1822. April 12th. KHOOSROO'S case.

Charge—MURDER.

THE prisoner above named, was charged with the murder of his wife, and tried for that offence at the second session of 1821, for zillah Rungpore. In referring the case, the Judge of Circuit observed, that it was not a case of a very serious nature, and that no reference to the superior Court would have been necessary, but for the *futwa* given by his law officer. The facts were briefly these. The prisoner, who had been long suffering under the tortures of the rheumatism, was unable to move about. He therefore asked his wife to bring him some water to drink, which she refused to do, and at the same time made use of very gross and improper language to him. This provoked him to such a degree that he took up a *pinrah*, (a wooden stool on which the lower class of natives sit,) and threw it at her, which struck her on the head, and killed her. They appeared from the evidence to have lived together happily before this affair occurred. The *futwa* of the law officer of the Court of Circuit convicted the prisoner of murder, in consequence of the dimensions and weight of the stool; and the proceedings were therefore submitted for the final orders of the superior Court. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Khoosroo of the species of homicide termed *Kutl i umd*, by killing his wife with the blow of a wooden stool; and declared him liable to *Deeut*, *Kissas* being barred from the heirs being children of the slain. By the Court, W. Dorin (officiating Judge.) "I think five years imprisonment would be a proper sentence. There does not seem to have been an intention to kill. The prisoner, in anger at abuse from his wife, threw a wooden stool at her, which hitting her on the head, killed her. It would appear that she had been ill some time, and was then unwell. The prisoner also had been crippled with rheumatism, and is described as still in a sickly state. The act, however, was rather a savage one." The second Judge (C. Smith) concurring in the above view of the case, a sentence of five years imprisonment was issued accordingly.

The prisoner, who was bedridden from rheumatism, threw a stool at his wife, in consequence of her abusing him, which killed her. Sentenced to five years imprisonment, for culpable homicide.

1822.
April 15th.
Case of ATTAOOLLAH and MUSST. TUPPEE.

GOVERNMENT,
against
ATTAOOLLAH and MUSST. TUPPEE.

Charge—MURDER.

Two prisoners convicted, the one of causing to be administered to her husband poison in the shape of a pill, the other of administering the same. Sentence imprisonment for life.

THE prisoners, Attaoollah and Musst. Tuppee, were charged with having administered poison to Azmutoollah, husband of the second prisoner, and having thereby caused his death. The deceased had been slightly indisposed for four or five days with occasional vomiting and fever, but not of a nature to threaten fatal consequences. It appeared, that at this period the first prisoner Attaoollah put into the hands of the second prisoner, Musst. Tuppee, a large black pill, and desired her to give it to her husband, mixed with his rice, and it would make him well. The woman accordingly put half the pill into the deceased's food at night, and gave it him to eat, without mentioning the circumstance to any one. Four or five hours after he had swallowed it, he was seized with most violent vomiting, attended with excruciating pains, which shortly terminated his existence.

In submitting this case for the consideration and orders of the Nizamut Adawlut, the Judge of Circuit accompanied it by the following observations. "There cannot, I think, be a doubt that the deceased died from poison, both from the attendant symptoms and from the circumstance of several fowls having eaten a part of what he had vomited, and almost immediately dying, which is fully proved. Both the prisoners acknowledge the share they took in the transaction. Attaoollah gives a very lame account of the manner in which he became possessed of the pill, stating, that it had been given him four or five days previously by a stranger, whom he had never seen before, and who professed to be a *Kubraj* or doctor, and told him the pill was a sure cure for vomiting; that for this reason he gave it to the woman to administer to the deceased. She states to the same effect, and disavows all intention of injuring her husband. It seems to me clearly established, that the pill was a powerful poison, and that the death was thereby occasioned: it is proved that the prisoner Attaoollah gave that poison to the woman, for the purpose of her administering it to her husband, the deceased; and that she did so in the manner pointed out, by mixing it with the rice, or usual food taken by her husband. The only points requiring consideration are, how far the prisoners were aware of the deleterious qualities of the pill, and what could have been their motives for such an atrocious act, as wilfully poisoning the deceased. The strange story told by Attaoollah of the manner in which he obtained the pill, the secrecy with which he gave it to the woman, and the advice he gave her to mix it with her husband's rice, are all circumstances against him; nor is there less cause for strongly suspecting the woman, from her following the advice given her, and mixing up half the pill in the deceased's food, without consulting her friends, or the doctor, who was in attendance on her husband in the house at the time. I cannot believe that

1822.

Case of ATTAOOLLAH and MUSST. TUPPEE.

either of the prisoners acted with any good intention; and the presumption of their guilt is, I fear, too violent to be set aside. They are both young, and the woman is handsome. If they did poison the deceased, the only reason which can be suspected is an intrigue between them, although there is nothing in the case affording grounds for such an inference, except the manner of the deceased's death."

The *futwa* of the law officer of the Court of Circuit convicted both the prisoners of giving the poison, knowing it to be such, and thereby causing death; and declared them liable to discretionary punishment by *Acoobut*, in which finding the Judge of Circuit fully concurred. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners Attaoollah and Mussummaut Tuppee, on strong presumption, the first of having knowingly caused poison to be administered to Azmutoollah, the second of having knowingly administered poison to the said Azmutoollah (her husband), which poison caused his death. By the Court, (J. Shakespear, fourth Juge.) "The *futwa* of our law officers convicts both prisoners on strong presumption of administering poison to the deceased, knowing it to be such, which poison caused his death. The deceased appears to have been ill of a fever, and subject to fits of vomiting for several days before the poison referred to in the proceedings was administered to him: I do not therefore think that it is fully established, that his death was accelerated by the pill given to him by the prisoners. I consider it to be proved, however, that the prisoners intended to make away with the deceased, and that they gave him the pill for that purpose. On the ground that the vicious intention is established, and that the prisoners are consequently guilty of a misdemeanour, I conceive that seven years imprisonment each, under all the circumstances of the case, will be a proper sentence." S. T. Goad (3d Judge.) "I do not concur in the above view of the case, but most fully with the *futwa* of the law officers; and am of opinion, that the prisoners should be sentenced to imprisonment (the male in hard labour) for life." W. Leycester (chief Judge.) "There seems to me ample ground to presume, that Azmut died of poison administered by Mussummaut Tuppee, and received by her for the purpose from Attaoollah; and that the said poison was given by Attaoollah, and administered by Musst. Tuppee, with the intention of causing the death of Azmut. I therefore agree in the sentence proposed by our 3d Judge." W. Dorin (officiating Judge.) "This case is not without difficulty. But I think there is strong presumption, that Attaoollah knowingly caused poison to be administered to the deceased by Tuppee; that Tuppee knowingly administered it; and that it accelerated, or caused, the death of the deceased. The strong fact to fix the knowledge on the woman is, her having mixed it secretly in the food of her husband. The *futwa* of the Circuit law officer is a good exposition of the case. I am for stopping short of a capital sentence, from the impression which must arise in all such cases, that it would have been more satisfactory to have got a competent medical opinion as to the cause of death. But these we seldom or ever get, and are left to draw the best conclusion we can with-

1822.
Case of ATTAOOLLAH and MUSST. TUPPEE.

out them." The Court, therefore, concurring in the conviction, sentenced each of the prisoners to be imprisoned for life; the first, Attaoollah. with hard labour, in the jail at Alipore; the second, Mussummaut Tuppee, in the jail at Tippera.

1822.
April 18th.
SALEEMOODEEN'S case.

MUSSUMMAUT RUSSOOL BEEBEE, *against* SALEEMOODEEN.

Charge—MURDER.

The prisoner was declared by the *futwa*, convicted of murder on strong circumstantial evidence; but, it being considered insufficient for his conviction by the Nizamut Adawlut, he was acquitted and released.

THE prisoner was charged with the murder of Mussummaut Molaem Beebee, a woman of about 25 years of age, daughter of the prosecutrix, and tried for that offence at the 1st sessions of 1822, for zillah Chittagong. The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of wilful murder, and liable to severe discretionary punishment extending to death; and the Judge of Circuit entirely approved of this verdict, feeling fully convinced, as he stated, of the prisoner's guilt. The circumstances of the case were briefly as follow. The deceased was a common prostitute, whom the prisoner used to frequent. On the evening the murder was committed, (the 4th November,) the prisoner was stated to have been distinctly seen by the witnesses Ram Doolal and Ramchurn to enter the deceased's house. A few hours afterwards, the voice of the deceased, calling loudly for assistance, was heard to proceed from an empty house contiguous to her own; and immediately after, these persons, and another witness named Yoosuf, (as they deposed,) saw the prisoner come out of this house, and run off. They called out, but receiving no answer, they got a light, and entered the house from which the voice of the deceased had proceeded, and found her dead, with her head almost hacked off from her body. A silver *hunslee* she used to wear was missing, but her bracelets and all her other ornaments were found upon her person. Notice was sent to the Thana, and next day the Darogha repaired to the spot, and hearing the above circumstances from the people, he went on the following day, and apprehended the prisoner in his own house. On his head was perceived a small cap with stains of blood upon it. A search was made for any instrument with which the act might have been committed, but nothing was found in the house, except an old rusty *dao* or sickle, which evidently had not been used for a long time. The Darogha perceiving some rattans in the place freshly cut, asked the prisoner with what weapon he had cut them, since the old *dao* could not have been made use of. He said he had borrowed a *dao* for that purpose from his neighbour, a person named Koresh. This person was sent for, and produced a *dao*, stating that, on the evening on which the murder was committed, the prisoner had borrowed the *dao* of him, and returned it next morning with the handle much besmear-

1822.
SALEEMOODEEN'S case.

ed with mud. This *dao* was examined, and after rubbing off the mud, a number of bloody stains were perceived on the handle. When the prisoner was asked how these marks of blood came to be on the handle of the *dao* and on the cap he wore, he said that the former were the stains of *pawn* he had been eating, and in respect to the latter, he gave several different accounts. In referring the case, the Judge of Circuit observed, that although there could not, in his opinion, be a doubt of the prisoner's guilt, from the unbroken chain of circumstances which pressed against him, yet it was not in his opinion so easy to account for the reasons which induced him to commit such an atrocious act; that had he intended only to rob the deceased, which the missing *hunslee* from her person might leave reason to suppose, he might have done so in a much more guarded manner, and that his previously providing himself with the *dao* shewed his deadly intent; that the law officer was of opinion, that he committed the murder in pursuit of robbery, and this might have been his object, although all the circumstances of the case left the matter in great doubt. The 4th Judge of the Nizamut Adawlut (J. Shakespear) recorded his opinion of the merits of this case in the following terms. "The deceased appears to have been a prostitute, and is stated to have been found at night with her throat cut in a dwelling adjoining her own, and her *hunslee* carried off. This occurred on a Sunday night. On Monday the Darogha arrived at the village, and he reports to the Magistrate on the same day (6th November 1821,) that he has not been able to obtain any clue to trace the murderer. On this report an order is passed directing a purwanah to be written to the Darogha, '*ba chushmnoomqee tumam*,' 'in terms of severe reprehension,' to trace and apprehend the offenders. After the receipt of the Magistrate's purwanah, on visiting the prisoner's house, the Darogha observes some marks of blood on the prisoner's turban, and apprehends him. On searching the house, an old useless *dao* is found; and the Darogha, remarking some *bates* or rattans newly cut, questioning the prisoner how he could have cut them with this *dao*, he says he borrowed a better one from a neighbour named Koreish. This *dao* (or bill-hook) being sent for, some stains, apparently of blood, are remarked on it, and Koreish states that the prisoner had returned the *dao* to him the morning after the murder, when the blade was soiled over with mud. Two neighbours then deposed that they heard the deceased call out for assistance in the night time; that they got up, and remarked the prisoner running off from the house of the deceased by moonlight, having previously seen the prisoner enter the house of the deceased the same evening. The *futwa* of the law officers of this Court convicts the prisoner on violent presumption, and declares him liable to discretionary punishment by *Seasut* extending to death. I do not credit the evidence, and think that the prisoner should be acquitted. The prisoner appears to have been detained seven or eight days at the Thana. The Darogha in the first instance, on the 6th November, reports his inability to trace the murderer. He then receives a threatening purwanah from the Magistrate, on the receipt of which, and not before, as would appear from his report of the 13th

1822. November, he collects the evidence to the present prosecution. The two principal witnesses, who did not at first state their knowledge of the circumstances to which they afterwards deposed, I consider to have been influenced in the manner stated by the Mohurrir of the Thana (Imam Oollah), who deposes, that he and the Darogha said to these witnesses Doolut and Moulea, when the Magistrate's purwanah arrived, "You live close to the deceased; if you do not inform by whom the murder was committed, it will be understood that you yourselves perpetrated it," on which they declared that they saw the prisoner running off, &c. It is not probable that the prisoner would, had he been guilty, have worn on his head a turban stained with blood, after the arrival of the Darogha at the village; and the Mohurrir says, that he ascertained that the prisoner's wife had the *menses* on her at the time that the blood was remarked on the prisoner's turban, and which is stated by one of the witnesses to have been at first urged by the prisoner, as having caused the stains on his turban. There are several contradictions in the depositions of the witnesses, and I consider the evidence altogether insufficient for conviction." In this opinion the chief Judge (W. Leycester) concurred, and the prisoner was acquitted accordingly.

SALEEMOODEEN'S case.

1822.
April 22d.
PHULDARS case.

GOVERNMENT, *against* PHULDAR.

The prisoner killed his wife, and afterwards attempted to commit suicide, under a strong feeling of shame and disgrace at loss of caste, occasioned by an imputation of incest attaching to the deceased. Sentenced, under all the circumstances of the case, to

THE prisoner Phuldar was tried at the 1st sessions of 1822, for zillah Furruckhabad, for the murder of his wife. The case, as it appeared in evidence, was as follows. A report having been circulated, that Bala, the prisoner's father, had criminal connexion with Musst. Bishunneea, his own daughter-in-law and the prisoner's wife, upon the occasion of a meeting of people of the same caste in the village where the prisoner resided, some of them objected to eat and drink in company with him and his father. This made so deep an impression of shame and grief upon the prisoner Phuldar, that at the expiration of three days from that time, he took an opportunity, just as his father had left the house, and no one but his wife was with him, of inflicting two such deep wounds with a sword upon her neck as to cause her immediate death. The prisoner confessed the crime, both at the Thana and before the Magistrate, stating that Bishunneea put the sword into his hand, and begged of him to kill her. But before the Court of Circuit, in his defence, he stated, that having found his wife in the act of adultery with a stranger, he put her to death, and then attempted to take his own life, which it appeared by the wound on his neck had nearly been effected. The prisoner could not prove the circumstance alleged in his defence, viz. that he caught his wife in the act of adultery. The law officer of the Court of Circuit declared the prisoner convicted of the wilful murder of his wife

1822.
PHULDARs case.

Mussummaut Bishunneea, and subject to death by *Kissas*. In this *futwa* the Judge of Circuit concurred; but thought it was a case in which mercy might be extended to the prisoner, considering the mingled feelings of grief and shame which had hurried him on to the act. The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having wilfully killed his wife, and declaring *Kissas* to be barred by the presumption of legality which arises, when one individual kills another by such other's desire, stated the prisoner to be liable to full *Deeut*, or to discretionary punishment by *Tazeer* on the principle of public justice. By the Court. J. Shakespear, (fourth Judge.) "The Circuit *futwa* convicts the prisoner, and declares him liable to *Kissas*. Our *futwa* also convicts the prisoner, but declares him liable only to *Deeut*, *Kissas* being barred, in consequence of a suspicion arising from the prisoner's confession that he killed his wife by her desire. I concur in the *futwa* of our law officers. I am of opinion, under all the circumstances of the case, that a sentence of seven years imprisonment will be proper." W. Dorin, (officiating Judge.) "The act seems to have been committed by the prisoner under a strong feeling of shame and disgrace, arising from an incestuous connexion (real or supposed) of his wife, for which those of his tribe had expelled his father and him from their society. He at the same time attempted to make away with himself, but recovered of the wound. I should be glad to agree to the proposed sentence, but I do not see any good ground for viewing this as an act short of murder. It seems to have been the result of a determined purpose. The woman's having urged him to put her to death (if she did so) must make no difference. I cannot agree to remit more than the capital part of the sentence. It would act as a premium on such crimes, if this man were seen again at large after seven years." The second Judge (C. Smith) concurring in the latter opinion, a sentence of imprisonment for life was passed accordingly.

imprisonment for life.

GOVERNMENT, *against* MUSST. BOONDEA.

1822.
April 24th.
MUSST. BOONDEA'S case.

Charge—MURDER.

THE prisoner Musst. Boondea was tried for the murder of her infant child at the first session of 1822, for the northern division of Bundelkhund. The crime with which the prisoner was charged took place on or about the 12th October 1821. The prisoner having become a widow, formed a connexion with one Bhoora Chumar, and the fruit of this connexion led to the crime. The prisoner having produced a female child, smothered it by thrusting a cloth into its mouth, and buried it in a ditch near the

The prisoner was convicted of the murder of her infant bastard child. By the *futwa*, *Kissas*

1822.

MUSST. BOONDEA'S case.

was declared to be barred, and *Deeut* only to be incurred, by reason of the maternal relationship.

The Court held, that this was a personal distinction inconsistent with equal justice, and provided against by section 2, Regulation VIII. 1799.

Sentence, imprisonment for life.

village, where it was shortly after discovered. There were not any eye-witnesses to the act, and the facts above stated were obtained from the prisoner's confession at the Thána and before the acting Magistrate. Before the Court of Circuit the prisoner pleaded not guilty. The law officer of the Court of Circuit convicted the prisoner of the murder of her new born child, and declared her liable to punishment by *Acoobut, Kissas* being barred from the circumstance of the prisoner being the mother of the deceased.

The Judge of Circuit concurred in the conviction of the prisoner, and therefore submitted the case for the final orders of the Nizamut Adawlut.

The *futwa* of the law officer of the Nizamut Adawlut was similar in purport to that of the Court below. By the Court. J. Shakespear, (fourth Judge.) "I concur in the *futwa*, and with reference to the ignorance of the woman, and the poverty which she urges in justification, I think the usual sentence of seven years imprisonment in cases of *Deeut*, should not be exceeded in the present instance." W. Dorin, (officiating Judge.) "The prisoner seems to have destroyed her bastard child on its birth, by stuffing a cloth into its mouth, or strangling it, and then buried it in a ditch. That it was born alive is in evidence. It was born in the ditch, and rooted out by hogs. I see nothing which should justify our passing a lower sentence than perpetual imprisonment. She came originally from Scindea's territory, but seems to have been three years in the village (Banda district) when the act took place. The only plea urged in excuse is poverty. The *futwa* bars *Kissas* on a ground of personal distinction, so that under Regulation VIII. 1799, we may take it as a *futwa* of *Kissas*, and not deeming a capital sentence advisable, I would mitigate it, under Regulation XIV. of 1810, to imprisonment for life."—C. Smith, (second Judge.) "I concur with the *futwa* in the conviction of the prisoner, and with the officiating Judge in thinking that the ground on which *Kissas* is barred brings the case under section 2, Regulation VIII. 1799. I also agree to the remission of the capital punishment, and to sentence the prisoner to confinement for life in the jail of Banda."

The following sentence was accordingly issued. "The *futwa* of two of the law officers of the Nizamut Adawlut convicts the prisoner Musst. Boondea of the murder of her new born illegitimate child; and declares her liable to full *Deeut, Kissas* being barred by the maternal relationship of the prisoner to the slain. The Court observe, that this is a personal ground of distinction, inconsistent with equal justice, provided against by section 2, Regulation VIII. 1799; and sentence the prisoner Musst. Boondea to perpetual imprisonment in the jail of the northern division of Bundlekhund."

MUSST. PRITMA, *against* KOOSHA and ASHRUF.

1822.
April 24th.
Case of KOOSHA and ASHRUF.
Of two prisoners tried for murder, the first stated that the deceased was killed when in the act of theft, in company with himself and the second prisoner; the second prisoner denied this, and accused the first of having in his presence murdered the deceased. The Court, crediting the first statement, directed the discharge of the prisoners.

THE prisoners above named were charged with murder, and tried for that offence at the 1st sessions of 1821, for zillah Rungpore. The prosecutrix was the widow of the deceased Ubeera, who lived with his wife in her father's house from the time of their marriage. It appeared, that on the night the murder was supposed to have occurred, the prisoner Koosha came to the house of the deceased, and carried him away under the pretence of catching birds; and as he did not return to his home, the prosecutrix in the morning asked the prisoner where her husband was. He told her that her husband had gone to visit his father; but on enquiry and search being made for him, it appeared he had not been there. Two days after, the corpse of the deceased was seen floating in a *jheel*, about a coss from the village in which the parties resided. Koosha was apprehended by the Gomashta of the village, on the same day on which the body was found, on the information of the prosecutrix, and on the following day was delivered over to the Darogha's custody; when Koosha asserted, that he had accompanied the deceased with the intention of committing a theft to the village of Kacheehara, and that whilst they were in the act of robbing the cow-house of a person named Sheikh Kanoo, the people got up, and beat the deceased, and that he (the prisoner) made his escape by flight. This statement he denied to the Magistrate, and also to the Court of Circuit, and insinuated that an improper intercourse subsisted between Ashruf and the prosecutrix, which circumstance Ashruf had informed him of. After a lapse of three days, Ashruf was seized on suspicion, arising from his absenting himself. He was at the time greatly agitated, and made a statement, of which the following is the substance:—that Koosha took the deceased first to the *Kooreea* (or temporary hut built for the shelter of persons guarding crops) of two persons named Chubbee and Hubbee, saying they were going to catch birds, and in a short time went on to the hut of Koosha, leaving him there; and in the middle of the night Koosha returned, and compelled him to go to his hut; that on entering it, Koosha immediately seized the deceased by the neck, who was sound asleep, sat on his breast, and strangled him; he then tied a rope round his neck, which he fastened to a bamboo, and dragged the body to the *jheel*, sticking the bamboo into the bottom of the *jheel* with the body. He then washed himself, and they went together back to the hut of Chubbee and Hubbee, and slept there the rest of the night. Ashruf repeated this statement before the Magistrate and the Court of Circuit. The reason stated by Ashruf to have been given by Koosha for the murder is, that Ubeera was always teazing him to commit theft. The above statement was partly confirmed by the evidence given by Chubbee, who stated, that Koosha and the deceased staid a short time in his hut, and went away, leaving Ashruf; and that awaking in the middle of the night, he

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Case of KOOSHA and ASHRUF.

observed Ashruf had left it. Hubbee stated, that Koosha and the deceased came together to his hut, and in a short time went away, leaving Ashruf there; that in the morning, seeing only Koosha and Ashruf, he asked the former prisoner where the deceased was, who told him he had returned home. When the Darogha held his inquest, the body was in a state of putrefaction, with only small particles of flesh in some places, and could not therefore be identified; but three witnesses who saw the body the day it was found, declared that they clearly recognized the body of the deceased, and that at that time it was almost entire.

The *futwa* of the law officer of the Court of Circuit convicted the prisoners of murder on strong presumption; concurring with which, the Judge of Circuit submitted the case for the final orders of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut convicted both the prisoners on violent presumption, and declared the first prisoner liable to discretionary punishment by *Seasut* extending to death, as the principal, and the second to discretionary punishment by *Acoobut*, as accessary to the murder. By the Court. J. Shakespear, (fourth Judge.) "The proofs on the side of the prosecution are confined to the examination or confession of the second prisoner. I totally discredit the story told by this prisoner, and consider the motives stated by him to have influenced the first prisoner to commit the murder as altogether improbable I believe the statement given by the first prisoner, and imagine the real state of the case to be, that both the prisoners and the deceased went out at night together for the purpose of committing robbery, when the deceased, being seized by the villagers, was beaten in such a manner as to cause his death, and the body taken and fastened down under water in a *jheel*, either by the prisoners or by the villagers, in order to conceal the occurrence. The state of the body, with a rib broken, as affirmed in the deposition of the Gomashta Ramkomar, corresponds with this view of the case, but not with the account given by the second prisoner of the mode in which the murder was committed; and he, I think, has been induced to charge the first prisoner with the murder, with the view of exculpating himself from the charge of robbery, with which he stood implicated by the Moofussil examination of his associate previously given. I think that both prisoners should be acquitted and discharged." C. Smith, (second Judge.) "I concur with the fourth Judge in thinking that the evidence, whether direct or circumstantial, is insufficient to bring the crime home to the prisoners, and that they ought therefore to be discharged."—Prisoners released accordingly.

1822.
April 24th.
Case of ISHREE TEWAREE and OMRAO SINGH.

GOVERNMENT,
against
ISHREE TEWAREE and OMRAO SINGH.

Charge—DACOITY.

Two prisoners convicted by the *futwa* of Dacoity, on the direct evidence of the person robbed and his wife to recognition. But this testimony rejected by the Nizamut Adawlut, being unsupported by circumstantial evidence, and otherwise open to suspicion.

THE prisoners were tried on the charge above specified, at the 2d sessions of 1821, for zillah Goruckpore. It appeared in evidence, that the house of a person named Emaum Bukhsh, in the bazar of Beleara, was attacked on the night of the 17th of Phagoon 1228, Fuslee, by seven Dacoits, when they forcibly took the ornaments from the persons of his wife and son, and tore the nose of the former, in pulling a ring from it; carried off property to the value of about thirty rupees; and on quitting the place, wounded Emaum Bukhsh. The prisoners were sworn to by the above named Emaum Buksh and his wife, as having been recognized by them at the time of the perpetration of the robbery.

The *futwa* of the law officer of the Court of Circuit declared the prisoners convicted on violent presumption of Dacoity, in which Emaum Bukhsh was wounded, and a gold ring forcibly pulled from the nose of his wife, which was torn, and his property plundered in the night. Sentence was passed on the prisoners agreeably to the Regulations; and the Circuit Judge, in referring the case, recommended its being carried into execution.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners of the crime of robbery by open violence, and wounding, and declared them liable to discretionary punishment by *Acoobut* for the offence. By the Court. C. Smith, (second Judge.) "Emaum Bukhsh and his wife having sworn positively that they recognized the two prisoners when they were committing the Dacoity, this proof alone, without any corroboration from the previous bad character of the prisoners, appearing to me wholly insufficient, I am of opinion they should be discharged." W. Dorin, (officiating Judge.) "I agree in thinking it unsafe to act on the mere swearing of Emaum Bukhsh and his wife, to recognition of the two prisoners (Chowkedars of the place) at the robbery of his house. It is true, that Emaum Bukhsh named these two as recognized in his statement made at the Thana the morning after the robbery, and has since persevered in saying he knew them. But why should not the boy their son, twelve years old, have known them also? The evidence of the wife before the Magistrate shews that there was previous ill will on the part of her and her husband against the Chowkedars of the place. The witness Ouree says on the trial, that he, with other villagers, went up to Emaum's house after the thieves were off, and that then he only said generally that the robbers were Chowkedars, naming none specifically. His evidence before the Magistrate is the same. The first account of the affair given by Emaum Bukhsh recites, that only *one* entered his house. On the other hand, there seems to have been no assistance rendered by any Chowkedars of the place, and the two defend-

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Case of ISHREE TEWAREE and OMRAO SINGH.

ants have set up an *alibi*, which is not well made out. On the whole, however, in a case involving such serious punishment, I am for acquitting on the direct evidence, which is not supported by circumstantial proof, and which is on some accounts open to suspicion." The prisoners were discharged accordingly.

1822.

April 26th.

Case of NETRA and others.

GOVERNMENT,
against
NETRA and two others.

Charge—DACOITY.

Prisoner found guilty of privity to Dacoity, on his own confession, by the *futwas*, but released by the Nizamut Adawlut, it appearing that he had been induced to confess by a promise of pardon from the *mohurrir* of the Thana, and of being appointed a *burkundaz*.

THE prisoner Netra was committed to take his trial at the second sessions of 1821, for zillah Rungpore, for the offence of Dacoity, along with two other individuals named Janna and Nubboo.

The facts, as they appeared in evidence, were as follow. A gang of Dacoits, consisting of about fifteen men, armed with bamboos, on the night of the 15th of Kartik, or 31st October 1821, entered the house of one Motee Ram, who was sleeping on his chest, from which they dragged him into the enclosure, and threw him on the ground. Two or three of them placed a bamboo across his breast, and kept him down, while the rest of them re-entered the house, broke open the chest, and plundered it of cash and property to the value of 132 rupees. The Mohurrir of the Thana, shortly after his arrival at the spot, apprehended Netra on the information given by a relation of the prosecutor named Myram, who that night slept in the house, and who informed him that he recognized Netra during the perpetration of the Dacoity by the light of a *mussal*. Netra denied being present at the Dacoity, but said he heard the particulars connected with the circumstance from Bhugwanpore, and implicated the other two, as well as several other prisoners. Nothing was found in Netra's house, and very unfair means were resorted to, and every encouragement held out to prevail upon him to confess. It appeared from the evidence, that the Mohurrir made the most solemn declarations to Netra that he would release him, and at the same time promised to make him a Thana Burkundaz. It was therefore no wonder (as observed by the Judge of Circuit) that he should have made the statement he did, implicating nine persons upon hearsay. In the Moofussil, the prisoner Janna confessed having committed the Dacoity; and near his house, concealed under a heap of ashes, were found some silver ornaments belonging to the prosecutor, which were pointed out, and delivered up by the prisoner's wife, at the desire of her husband. The prisoner Nubboo also confessed in the Moofussil, and in his house was found a *Thalee* and one earring, the property of the prosecutor.

The *futwa* of the law officer of the Court of Circuit convicted Netra of being privy to the Dacoity, and Janna and Nubboo of being actually concerned therein; concurring with which *futwa*, the

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Case of NETRA and others.

Judge of Circuit sentenced each of the prisoners to receive 39 *corahs*, and to be transported and imprisoned for life; but he recommended Netra to pardon, on the ground of the illegal advantage taken to induce him to reveal what he knew of the circumstances, and of there being no other proof established against him besides his own representation.

The prisoners Janna and Nubboo were convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of having been concerned in gang robbery attended with personal violence, and the prisoner Netra of being an accessary thereto before and after the fact. The Court, concurring in the said *futwa* as far as regarded the prisoners Janna and Nubboo, confirmed the sentence of 39 stripes of the *corah*, and imprisonment and transportation for life passed upon them by the Judge of Circuit. It appearing, however, that the confession of the prisoner Netra was taken by Rooderkanth Mohurrir of Thana Nowabgunge under a promise of release, and of promotion to be a Burkundaz in the service of Government, the Court did not concur in his conviction, but annulled the sentence passed upon him by the Judge of Circuit, and directed that he should be immediately released. The Court remarked, that the Judge of Circuit had already directed the removal from office of the above named Mohurrir for his objectionable conduct in this case.

1822.
April 29th.
NUNDA'S case.

GOVERNMENT,
against
NUNDA.

Charge—MURDER.

Prisoner convicted of the murder of his wife by reason of her adultery. The Court, believing the alleged adultery, under all the circumstances of the case, sentenced him to imprisonment for life.

THE prisoner Nunda was charged with the murder of his wife Kimmeah, and tried for that offence at the first sessions of 1822, for the northern division of Bundelkhund. The circumstance which led the prisoner to commit the crime, was an adulterous intercourse which the deceased had carried on for some time previous with a Burkundaz named Lalkhan; consequently, on or about the 15th of August last, the prisoner killed the deceased with a *koolharee* or hatchet, by cutting her throat, while (as it would appear from the evidence) she was sleeping. There were not any eye-witnesses to the fact. The prisoner at the Thana, before the Magistrate, and also before the Court of Circuit, confessed the crime, and urged in his defence, that he was led to commit the act by the disgrace which the deceased's conduct had brought upon him. The law officer of the Court of Circuit convicted the prisoner Nunda of the wilful murder of his wife Kimmeah, and declared him liable to *Kissas*, in which conviction the Judge of Circuit expressed his concurrence, adding, that, although the criminal intercourse between the deceased and the prisoner Lalkhan had not been satisfactorily established, he

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entertained no doubt of its existence, and that the prisoner was instigated to commit the murder by the disgrace which he conceived the conduct of the deceased had brought on him.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the wilful murder of Kimmeah, his wife, and declared him liable to capital punishment by *Kissas*. The fourth Judge of the Nizamut Adawlut (J. Shakespear) observed, that he concurred in the conviction, but wished to spare the man's life, considering the following grounds for mitigation.

The Judge of Circuit had stated, that he entertained no doubt of the adulterous intercourse of the prisoner's wife, who was a Hindoo. This intercouse was with a Moosulmaun, and that Moosulmaun a *Burkundaz* of the police. The prisoner stated that he complained to the Jemadar against the *Burkundaz*, and that nothing was done to restrain him: this was not proved, but the story was credible. The prisoner urged, that his neighbours had refused to associate with him in consequence of his wife's misconduct, and that this disgrace had instigated him to the commission of the act. In this opinion, as to the propriety of mitigation, the Chief Judge (W. Leycester) expressed his concurrence, and the following sentence was accordingly passed.

"The Court, observing that the conviction of the prisoner rests upon his confession, and that many extenuating pleas are urged therein, deem it just to allow him the benefit of the same, and consequently, considering him a proper object of mitigation in the capital part of the sentence, adjudge him to be imprisoned for life in the zillah jail."

1822.
May 6th.
KHOOMAN'S case.

GOVERNMENT, *against* KHOOMAN.

Charge—PERJURY.

The confession of a prisoner that he swore falsely is sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the de-

THIS case was in substance as follows. On the 23d of July last, the prisoner was brought to the Magistrate's Court in a mutilated state, having one hand and foot cut off, which, in his deposition on oath, he stated had been done by order of Bijye Buhadoor, the son of Raja Chunder Huns, under the following circumstances; that having heard of the murders of the Kuchwahs committed at Koodaree, (a case about this time submitted to the Nizamut Adawlut,) he proceeded there with his brother Suddasook to enquire after some persons whom he stated to be his relations; that they were there seized by some of the Raja's people, and taken to his fort; that his brother, in attempting to make his escape, was killed, and he himself had a hand and foot cut off. This statement he maintained on further examination made on the 30th of October. The acting Ma-

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KHOOMAN'S case.

gistrate adopted such measures as he thought necessary to ascertain the truth of the prisoner's statement; but it did not appear that the Raja's son, or any other persons, (for the prisoner did not mention names,) were subjected to any imprisonment in consequence of this accusation. The Raja's son (Bijye Buhadoor) was sent to the Magistrate's Court on or about the 2d of August, with other persons who were implicated in the murders of the Kuchwahs, and on the final disposal of the case by the acting Magistrate, on the 1st February, Bijye Bahadoor was discharged. On the 19th November, the prisoner confessed that his former statements were a mere fabrication; that he lost his hand and foot at Gwalior; that he was in the service of Ram Rai (one of Scindeah's chiefs), and was in this manner punished, in consequence of his having been detected in an amour with a slave girl belonging to that person: after undergoing this punishment, he was conveyed to Jalown, and there he heard of the murders of the Kuchwahs. There was, in the opinion of the Judge of Circuit, every reason to believe that the latter statement was the correct one. The motives which the prisoner assigned for his conduct were to secure attention and care in his wounded state, and a provision for himself in the helpless condition he was. It was difficult, the Judge of Circuit observed, to determine correctly what his motive might have been. Had his statement been confined to his own treatment, great appearance of truth would deservedly attach to it; but the additional accusation laid to the charge of the Raja's people, of having murdered his brother, aided the suspicion that he was made the instrument of a malicious design to injure the Raja. Admitting, however, this was the case, great allowance should (the Judge thought) be made for the lamentable state in which the prisoner then was, suffering, as he must have been doing, from the cruel punishment he had undergone but six or seven days before.

Deposition charged to be false.

The law officer of the Court of Circuit convicted the prisoner of perjury, from which the Judge did not dissent: and in consequence passed sentence of three years imprisonment; but submitted to the judgment of the Court of Nizamut Adawlut, whether the circumstances of the case would not admit of a further mitigation, if not altogether of a remission of the sentence.

The prisoner was convicted by the *futwa* of two of the law officers of the Nizamut Adawlut, of wilful perjury, and declared liable to discretionary punishment by *Acoobut*.

By the Court. W. Dorin, (officiating Judge.) "The perjury is proved by the admission of the defendant, the object of it being to procure reception and medical care to himself when in a wounded state, his hand and foot having been cut off for some misdeed at Gwalior, by order of a Mahratta chief. But his false story involved a charge of mutilation and of murder against Raja Bijye Buhadoor. This he afterwards retracted by the confession, and it would not appear that he acted under any feeling of enmity against that person. He was committed on the 7th of December last. His first examination was on the 23d of July preceding. He must now have had about six months imprisonment. Though I do not con-

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sider the perjury to have been grounded on any particular enmity to the person charged, it was wilful, and with a view to serve the defendant's own purpose; under the strong impulse, however, of a desire to get himself taken care of. If it had served his purpose, he probably would have persisted in his charge against Bijye Buhadoor. That person does not seem to have been apprehended on the defendant's charge: he is charged, on the Magistrate's proceedings, with concern in the Kuchwa murders, and also with mutilating this defendant. I would suggest six months imprisonment, in addition to what he has already undergone." C. Smith, (2d Judge.) "I think there is no sufficient evidence to shew whether the prisoner's first statement is false, or his second; and that the prisoner, therefore, should be released, under the precedent of the case of Musst. Kutcha, trial 9th of Nizamut cases decided in 1815." W. Dorin (officiating Judge) resumed. "In consequence of doubts suggested by the 2d Judge, I have looked over this case again, and still retain the opinion above expressed. I hold the confession of the defendant that he swore falsely, to be sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the deposition charged to be false. I think there is strong presumption, from the Magistrate's proceedings, that the deposition was false. If the mutilation had taken place at Kadari, there would probably have been some trace forthcoming of such an occurrence, which there is not. The Burkundaz Hiyat Khan, and several *baigars*, examined by the Magistrate, depose to a mutilated man having been brought from the direction of Gwalior. If the Kadari people did it, why did they stop short of his life? The circumstances leading to an opposite conclusion are, 1st, that the defendant is of the Kuchwa caste; and 2dly, that Bijye Buhadoor's people may have managed to stop his mouth. I think, however, the first inference much preponderates, and that the presumption is strong as to the falsehood of his story on oath to the Magistrate. It is certainly not cleared up, for what he suffered at Gwalior; but if it was for intrigue, it is in vain to expect that the sufferer by his misdeed, will divulge the circumstance." The 3d Judge (S. T. Goad) concurring in the opinion expressed by the officiating Judge, the sentence of three years imprisonment, passed upon the prisoner by the Judge of Circuit, was annulled, and, under all the circumstances of the case, he was sentenced to six months imprisonment.

CHANDA SINGH, *against* BHUJA.

1822. May 15th. BHUJA'S case.

Charge—MURDER.

To justify a man in killing his wife and her paramour, according to the Moohummudan law, it is not necessary that he should see them in the act of adultery; presumption of it arising from situation is sufficient.

THIS was a case of murder, tried at the Bareilly monthly sessions for March 1822, and submitted by the Judge who presided on the trial, for the information and orders of the Nizamut Adawlut, from the circumstance of his not having met with a similar case before, during his experience as a Judge of Circuit. The prisoner, Bhuja, was *chowkeedar* of Mouza Neolee. He had accompanied the Zemindar of the village to a neighbouring village, and returning at about eight o'clock of the night of the 8th of February, sat on the Zemindar's *chowpaul* a couple of hours longer, and then went home. Arriving at his house, he found the *tattee* of his door fastened inside: on which he called out to his wife, and seeing through the crevices of the *tattee* by moonlight, that there was a man in the same bed with her, he drew his sword, and having got into the house, he killed his wife and her paramour, without having exchanged a word with either after his entrance into the house, as also without knowing who the man was, till after he had killed him, and then fled. Although the prisoner fled through fear of the consequences of the act, it appeared that upon reflection he delivered himself up to the police officers, on the sixth day after. In this case, there were no witnesses to the fact, but the prisoner's declaration was corroborated by strong circumstantial evidence: such as the situation of the bodies of Musst. Ruzzuneea and Kunnuck, when discovered by Allaid Singh and the neighbours. The difference of cast between Kunnuck Singh, a Rajpoot, and Bhuja, a sweeper, might be deemed a sufficient bar to the former being found in the house of the latter, unless he had gone there by stealth, and with a nefarious intention.

The law officer of the Court of Circuit convicted Bhuja of the wilful homicide of his wife Musst. Ruzzuneea and Kunnuck, at the time of his discovering them in the act of adultery; but declared that *Kissas* was barred by that circumstance, and that the prisoner should be released. The Judge of Circuit concurred with the law officer in this *futwa*; but, for the reason already stated, he postponed issuing a warrant for release, until the orders of the Nizamut Adawlut might arrive.

The *futwa* of two of the law officers of the Nizamut Adawlut found the fact, that the prisoner Bhuja killed his wife Ruzzuneea, and Kunnuck, a stranger, on the prisoner's coming home to his own house, and finding them there in the commission of adultery; and declared the homicide to be justifiable. The Court concurred in the *futwa*, considering it a case of justifiable homicide, from the evidence on record; and in conformity to the *futwa*, directed that the prisoner be discharged.

1822.
May 20th.
Case of LAL SINGH and KHEWANEE.

GOVERNMENT,
against
LAL SINGH and KHEWANEE.

Charge—HIGHWAY ROBBERY.

A prisoner's Thana confession (not borne out by the evidence on record) that he had two other associates in a case of highway robbery, is not sufficient evidence of a "gang," so as to bring the case within the rule of section 3, Regulation LIII. 1803.

THE prisoners above named were tried for the offence of highway robbery at the first sessions of 1822, for zillah Aligurh. The case, as it appeared from the evidence on the trial, was briefly as follows. A person named Rhade, a cloth-seller, was on his way to Raugeghaut, on the evening of the 3d of November 1821, after it had become dark, with a bundle containing eleven pieces of cloth; when being midway between Mouza Gungabauss and Badepoor, two persons came up to him, and one of them having seized him by the throat, the other, on his calling out, threw dust into his mouth, and taking his bundle from him, ran off with it. The one who had seized him by the throat, having thrown him down, sat upon his chest till the other got out of sight with the bundle, and then seizing his turban, he also ran off. Rhade, upon being set free, immediately called out; and Jeyram and another person coming up, he pointed out to them the direction in which the robbers had fled. Jeyram, Rambuksh, and the prosecutor pursued and apprehended Lal Singh, who confessed having been with others who committed the robbery, and the prosecutor's turban was also found in his possession. The prisoner Lal Singh having implicated Khewanee, the latter was apprehended five days after at Mouza Rajpoor. The prisoner Khewanee denied the charge at the Thana, before the Magistrate, and before the Court of Circuit. He admitted at the Thana, that having heard that Lal Singh and another had committed a robbery on a Bunneah, and had implicated him, he fled through fear. The witnesses Koonjul and Holassee, both of them being uncles to the prisoner Khewanee, deposed, that on Khewanee's coming to their village (Rajpoor), he told them that he had committed a highway robbery in company with Lal Singh, and intended to go to Shahpoor. These two witnesses, therefore, caused him to be apprehended. The confessions of the prisoner Lal Singh at the Thana, and before the officiating Magistrate, were satisfactorily proved.

The prosecutor swore that Lal Singh was the person who seized him by the throat, and sat on his breast; and that Khewanee was his accomplice who threw dust into his mouth, and took his bundle away from him. The witnesses Jeyram and Rambuksh deposed as to the immediate pursuit and apprehension of Lal Singh, as also to the prosecutor's pointing out his turban in the prisoner's possession at the time of his being apprehended. The law officer of the Court of Circuit convicted the prisoners of highway robbery by night, the first on his proved confessions at the Thana, as well as before the officiating Magistrate, as well as from the fact of the prosecutor's turban being found in his possession; and the second on his admission before his own relations. In this *futwa* the Judge of Circuit concurred, and accordingly sentenced both the prisoners, under the provisions of Regulation VIII. of

1822.

Case of LAL SINGH and KHEWANEE.

1808, to be confined in transportation for life, and to receive thirty-nine stripes with a *corah*.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners of having been accomplices in highway robbery, and declared them liable to discretionary punishment by *Acoobut*. The Court (present W. Leycester) fully concurred in the conviction, and observing, that the case was not charged by the prosecutor as coming under the definition laid down in section 3, Regulation LIII. of 1803, that is, of persons going forth with offensive weapons, or in a gang without them, and that there was nothing on the record to bring it under the above definition beyond the circumstance of its having been stated at the Thana by Lal Singh in his confession that there was a third person in company, which was not specifically proved by the witnesses thereto, and which was inconsistent with his statement on his first apprehension, considered the case to come more properly under the 4th clause of section 3, Regulation XVII. of 1817, and sentenced the prisoners to receive each 15 stripes of a *corah*, and to imprisonment with hard labour for five years.

GOVERNMENT,
against
KHAME and others.

Charge—MURDER.

1822.

May 23d.

Case of KHAME and others.

Case of the massacre of thirty-three individuals from motives of revenge. Three prisoners convicted of having been present, aiding and abetting at the massacre, sentenced to imprisonment for life. Capital punishment not awarded; the evi-

THE prisoners Gunnesh, Khame, Mohunjo, Heeralal, and others, were charged with the murder of thirty-three persons of the Kuchwa class of Rajpoots, and tried for that offence at the 1st sessions of 1822, for zillah Banda. It appeared in evidence, that the cause which led to this cruel massacre, with which the prisoners were charged, arose from the Kuchwahs laying claim to the Zemindaree right of Mouza Kudari, which was held in Jageer by Raja Chunder Huns*. A suit had been instituted in the civil Court, by the Kuchwas, against the Raja for possession of their rights; and it appeared that the immediate cause of the attack was the Kuchwas having cultivated some land without the Raja's permission. On the morning of the 13th of July, the Kuchwas were assembled unarmed in a *tope* or garden, having returned from going through the ceremony of ploughing on account of the *Shugoon*; that a body of 100 or 150 men came from the Raja's fort, and after an exchange of a few words, by desire of one Mohun Dobee, they opened a fire upon the Kuchwas, numbers of whom were there killed. From this they proceeded to the village, and in cool blood murdered others of the tribe whom they found in their houses, without distinction of age or sex, breaking even into the

* This man, and thirty-four of his followers, were subsequently killed, while actually resisting the authority of the Magistrate.

1822.

Case of KHAME and others.

Evidence not being sufficiently distinct of their being actively engaged in the actual perpetration of it.

roofs of the houses which they could not enter, and thus firing into them. In this wanton and cruel manner, thirty-three persons, and among them two or three infants, fell victims to the savage barbarity of the Raja's people. Mohun Dobee, with a person named Chutter Singh, (a relation of the Raja's,) appeared to have been the principal persons concerned in this massacre; but they, with a greater number of the offenders, had, up to the date of the trial, escaped apprehension or detection. The eight prisoners who were committed for trial pleaded not guilty before the Court of Circuit. In their depositions before the Magistrate, the prisoners Gunnesh and Khame admitted that they had accompanied the murdering party; and the Judge of Circuit, referring the case, observed he had no doubt of their having taken an active part in the barbarous proceeding, and he was of the same opinion with regard to the prisoner Mohunjo.

The law officer of the Court of Circuit convicted the prisoners Gunnesh, Khame, and Heera Lal, on violent presumption, and declared them liable to *Seasut*. The remaining five prisoners, namely Subsook, Kurn Singh, Bhujjun, Subbul Singh, and Mohunjo, the law officer acquitted, as the evidence of Khoomaun, Lakhun, and Ramdeen was insufficient to convict them. The Judge of Circuit concurred in the conviction of Gunesh, Khame, and Heera Lal, but not in the acquittal of Mohunjo; as Ramdeen not only corroborated the statements of the other two witnesses as to his being present, but deposed that he was actively concerned in wounding Gunna, one of the deceased persons. He did not therefore hold the law officer's objection to be good against the validity of his testimony, as it related to Mohunjo, and consequently submitted his case, with that of the three convicted prisoners, for the final orders of the Nizamut Adawlut. As he considered the evidence against the prisoners Subsook, Kurn Singh, Bhujjun, and Subbul, to be very unsatisfactory and defective, the Judge of Circuit concurred in their acquittal, and discharged them accordingly.

The *futwa* of the law officers of the Nizamut Adawlut acquitted Mohunjo, and convicted the three others, declaring them liable to capital punishment by *Seasut*. By the Court. W. Leycester, (chief Judge.) "I agree in the conviction of Gunesh and Heera Lal, and am not able to discover any ground why capital sentence should not be passed upon them. I agree in the acquittal of Mohunjo, and would release Khame also, as not duly convicted." J. Shakespear, (fourth Judge.) "I agree with the chief Judge in sentencing the prisoners Gunesh and Heera Lal to capital punishment, and in the acquittal of Mohunjo, but think that Khame ought not to escape. He admits, before the Magistrate and the Court of Circuit, that he accompanied the party of armed men sent out of the fort by the Raja, and was present when sixteen of the Kuchwas were slaughtered in the *tope* and two in the village. It is not to be credited, that he went into the village to save the Kuchwas, as he asserts. A sword plundered in the village appears to have been found in his possession; and the old man Ghasee deposes, that he was seized by Khame during the massacre, or subsequently thereto, and conveyed to the Raja, who ordered him

1822.
Case of KHAME and others.

into confinement. If the intention of this prisoner had been such as he states, he would have hastened to the Raja after the massacre in the garden, to have prevented further bloodshed by interceding for the Kuchwas, and not have accompanied the murderers into the village. As the chief Judge has stated his opinion for the acquittal of Khame, I do not propose that he should be sentenced to death, but I think that he should be imprisoned for life." C. Smith, (second Judge.) "I concur in the acquittal of Mohunjo, and doubting whether there is sufficiently distinct evidence of the other prisoners being actively engaged in the actual perpetration of the massacre to warrant a capital sentence, I am of opinion, that Gunesh, Khame, and Heera Lal should be sentenced to imprisonment for life, in the Allipore jail, for the offence of having been present, aiding and abetting at the massacre of the Kuchwa Rajpoots." Leaning to the side of mercy, the 4th Judge acquiesced in the sentence proposed by the 2d Judge, and a sentence of perpetual imprisonment in the Allipore jail was accordingly passed on the three convicted prisoners.

1822.
May 23d.
JOWAHIR, *alias* PUNCHUM'S case.

GOVERNMENT, *against* JOWAHIR, *alias* PUNCHUM.

Charge—MURDER.

THIS trial came on at the 1st sessions of 1822, for zillah Etawa. The case was as follows. On the 17th June 1817, the corpse of Musst. Nowulleea was found in the jungle of Mouza Nuggla Bund, bearing the marks of repeated wounds on the neck. The body being recognized, it was ascertained that the prisoner Jowahir with his deceased wife Nowulleea had been on a visit to Musst. Purranee, her mother-in-law, who resided at Allumgeerpoor, and that the husband and wife having taken leave of Musst. Purranee on the afternoon of the 16th, (the day before the body was found,) had proceeded together in the direction of the prisoner's village. An inquest having been held upon the corpse, strict search was made after the prisoner Jowahir at his and his father's (Culloo's) house, as well as in other places, without success. On the 6th of July 1821, a person named Chuta brought Jowahir to the Thana at Gurwur, and stated, that four years prior to that time, the prisoner had committed a murder in the Beebamow jurisdiction, and had fled; that having seen him at work drawing water near Nuggla Ummur Singh, he had told the people there that he was a murderer, and with the assistance of a Burkundaz, had apprehended him. The prisoner having been sent in to the acting Magistrate, not only denied the charge of murder, but stated that his name was Punchum, and not Jowahir; that he never was married; that he did not run away, and moreover that his father and

The prisoner was charged with having murdered his wife four years before. On being apprehended, he denied being the husband of the deceased, and assumed a feigned name. Sentenced to perpetual imprisonment, on conviction of the charge from circumstantial

1822.

JOWAHIR *alias* PUNCHUM'S case.

evidence, and proof of his identity.

mother were both dead. The prisoner was identified as Jowahir, who had married Mussummaut Nowulleea about six or seven years before, by Musst. Purranee, the mother, as well as by Punnoo the brother of the deceased; also by Chuta the informer, Chutoo the Zemindar, and Mandatta the *Bullaher* of Mouza Allumgeerpoor. Mussummaut Purranee, Chuta, and Punnoo deposed as to the prisoner's having left Allumgeerpoor in company with his wife Nowulleea the day before her corpse was found. Culloo, the prisoner's reputed father, denied having ever seen him before, but he was satisfactorily contradicted on that head.

The law officer of the Court of Circuit convicted the prisoner of the wilful murder of his wife, with an instrument of iron, on violent presumption, and declared him subject to death by *Kissas*. The Judge of Circuit, in referring the case, observed, that there was no direct evidence; but that the circumstances of the prisoner's having taken his wife from Allumgeerpoor the day before her corpse was found, and having himself fled, and when apprehended after a lapse of several years, having denied his name and connexion with Nowulleea, all which facts were satisfactorily proved, amounted, in his opinion, to violent presumption. He therefore concurred in the *futwa* of the law officer.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner upon strong presumption of the murder of his wife Nowulleea, and declared him liable to death by *Seasut* for the crime.

By the Court. C. Smith, (second Judge.) "Taking the prisoner's identity to be sufficiently established, (and I am of opinion, with the Judge of Circuit, and the law officers of both Courts, that it is so,) the circumstances, namely, the prisoner's taking away the deceased from her mother's house the day preceding her death, her being found murdered in the way between the village from which he took her and his own, his absconding for more than four years from that date, the want of all cause for his doing so but a consciousness that he had committed the murder, the general and full persuasion that he did so and had on that account absconded, and his attempt, on his being apprehended, to disguise his name and his connexion with the deceased, are such as warrant, in my judgment, a strong presumption that he is guilty of the crime imputed to him, and I think that the nature of the case and evidence calls for a sentence of perpetual imprisonment with labour in the jail of Allipore." The fourth Judge (J. Shakespear) concurring in this opinion, a sentence of perpetual imprisonment in the Allipore jail was passed accordingly.

1822.
May 23d.
Case of PHUDALEE and HURBUNS.

GOVERNMENT,
against
PHUDALEE and HURBUNS.
Charge—FORGERY.

To a conviction of forgery it is not necessary that the coins forged should be of base metal, or that the imitation should be of a coin being a legal tender of payment; provided it be current among the natives themselves.

THE trial of Phudalee and Hurbuns, (which took place at the 1st sessions of 1822, for zillah Banda,) charged with forging counterfeit coin, was referred to the Nizamut Adawlut, with the view to obtain mitigation of the sentence which had been passed on them, in conformity with clause 2, section 9, Regulation XVII. 1817. It appeared on the trial, that the prisoner Phudalee gave the other prisoner a small quantity of silver and gold to be coined into money; but the latter, on a plea of having a demand against a relation of the former, detained the greater part of the silver, which induced Phudalee to prefer a complaint to the Thana, which led to the prisoner's commitment. Hurbuns coined or prepared five rupees from the silver which the other prisoner gave to him, when the hammer employed in the preparation of these having broke, he was prevented from finishing the remainder. These five rupees, together with two other rupees, which appeared to have been made of copper with a coating of silver, were delivered by Hurbuns to Phudalee. This was confirmed by the deposition of Dyal; and other circumstances deposed to by two other witnesses afforded strong presumption against the prisoner Hurbuns. The prisoner Phudalee, before the Magistrate and the Court of Circuit, acknowledged that he gave the prisoner Hurbuns pieces of silver and gold to be prepared into coin. The other prisoner pleaded not guilty.

The law officer of the Court of Circuit convicted the prisoners on violent presumption; and concurring in their conviction, the Judge of Circuit sentenced them each to seven years imprisonment, but declared his opinion, that the nature of their offence would admit of a mitigation of the sentence which, in conformity with the Regulation already quoted, he had no option but to pass. In concurring in the conviction of the prisoners by the law officer, he observed, that he did not consider that by clause 2, section 9, Regulation XVII. of 1817, alluding to "counterfeit coin in imitation of any of the gold, silver, or copper coins of the British Government in India," it is necessary that the counterfeit coin should be, as the Persian version of the Regulation makes it, "*Roopeea Culluh*," which he understood to be what the two rupees above described were. It appeared to him sufficient, he added, that the forged coin be a counterfeit or imitation, deficient in the standard weight of silver. No doubt could exist, in his opinion, as to the object of an individual in coining or imitating rupees. It could be no other, than, by reducing the standard weight of silver, to secure a profit to himself. Nor did he consider, by the term "current," it was intended that the coin should be a legal tender of payment, but simply a coin which is current among the natives themselves, or by means of which they carry on their transactions and negociations. In the present case, the coin imitated was the Sreenugger rupee, a

1822. Case of PHUDALEE and HURBUNS.

coinage of the Gwalior government, and very current in the district of Banda.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners Phudalee and Hurbuns, upon violent presumption of making and causing to be made rupees and gold mohurs, and declared them liable to discretionary punishment by *Acoobut* for the offence. The Court, (present C. Smith and J. Shakespear,) concurring in the *futwa*, and adverting to all the circumstances of the case, together with the officiating Judge of Circuit's recommendation of a mitigated punishment, annulled the sentence passed against the prisoners by the officiating Judge, under clause 2, section 9, Regulation XVII. 1817, and sentenced the prisoners Phudalee and Hurbuns to imprisonment for three years, with hard labour.

1822. May 29th. PUKHAREA'S case.

GOVERNMENT, *against* PUKHAREA.

Charge—MURDER.

Prisoner convicted of wounding his wife in a fit of anger, of which wounds she died three months afterwards. *Kissas* declared to be barred by the *futwa* on a doubt as to the proximate cause of her death. But the Court having no doubt that the death was caused by the wounding, sentenced the prisoner to confinement for life.

AT the first sessions of 1822, for zillah Agra, the prisoner Pukharea was arraigned for the murder of his wife. The case was in substance as follows: Pukharea having brought Musst. Uchnoo into his house as a second wife, she absconded; and the prisoner having found her, she refused to return on account of the ill treatment she received from Musst. Munkowur, his first wife. The prisoner returning home, upbraided his first wife on that account, and words ensuing, he drew his sword, and, according to his own confession, made two blows at her, (which caused her death, at the expiration of three months,) and then fled. The Thanadar, immediately on receiving notice of the fact, proceeded to the prisoner's house, and there found Musst. Munkowur with six sword wounds upon her, all of which she stated were inflicted by her husband Pukharee. On the 22d of February 1821, the Thanadar having received information of the death of Musst. Munkowur in consequence of her wounds, immediately went to the spot, and held an inquest on the body. On the 8th of December of the same year, the prisoner, having been traced to the house of Jewun Doss, a party of Burkundazes surrounded it, and on the prisoner's being demanded from Jewun Doss, he came out with his drawn sword; but, finding the Burkundazes also prepared, he turned the edge of it against his own throat, and inflicted upon himself rather a severe wound.

The prisoner confessed the crime at the Thana, before the officiating Magistrate, and before the Court of Circuit; and in the two latter confessions, he stated, that he was under the influence of intoxication when he committed the act; but in his confession at the Thana, he had not stated any thing of the kind, neither was there

any reason to suppose it. Besides the prisoner and his wife, there was a third person, named Purma, who chanced to be in the house at the time the murder occurred, and at a small distance from them; who seeing the prisoner attacking his wife Munkowur, called out to him to desist, but without effect.

1822. PUKHAREA'S case.

The law officer of the Court of Circuit convicted the prisoner Pukharea of the wilful murder of Musst. Munkowur, his wife, on his own confession, and on the evidence of the witness Purma, and declared him subject to death by *Kissas*. In this *futwa* the Judge of Circuit concurred; neither was he aware of any circumstance which could be urged in mitigation.

The *futwa* of the law officers of the Nizamut Adawlut declared *Kissas* to be barred, in consequence of the time which elapsed between the wounding and the death of the deceased, (upwards of three months,) and also in consequence of doubt whether her death was accelerated by the wounds, seeing that the immediate cause of demise was stated to have been the production of worms in the wound in her foot: they therefore held the prisoner liable to *Deeut* or *Seasut*, at the pleasure of the ruling power. The Court of Nizamut Adawlut (present C. Smith and J. Shakespear) considered the fact of wounding to be clearly established against the prisoner, and had no doubt that the woman's death was caused thereby. With reference to the *futwa*, and all the circumstances of the case, they thought that the prisoner should be sentenced to perpetual imprisonment in the jail of zillah Agra; a sentence to which effect was issued accordingly.

GOVERNMENT, *against* MUNGUL RAI and three others.

1822. June 5th. Case of MUNGUL RAI and others.

Charge—ASSISTING at SUTTEE, &c.

THE prisoners Mungul Rai, Cashinath Das, Ram Soonder, and Ramchunder, were charged with burning a woman on the funeral pile of her deceased husband, without giving information to the police, and against the remonstrances of the village Chowkeedars, and were tried at the 1st sessions of 1822, for zillah Backergunge. It was proved in evidence, that the father of the first prisoner (Mungul Rai) died on the afternoon of the 1st February 1822; and that, when it was known that his widow intended to burn with him, two of the Chowkeedars of the village represented to the parties the necessity of giving previous notice to the police Darogha, which they refused and omitted doing, and the *Suttee* took place on the same evening. There appeared to have been no legal impediment to the ceremony, or other objections to it, save the omission above noticed. The prisoners pleaded their ignorance of the rules enacted respecting *suttees*, and stated, that there was not time at such a late hour to give notice

The omission to give notice to the police of an intended *Suttee*, is not a criminal offence punishable under the Regulations.

1822.

Case of MUNGUL RAI and others.

to the Thana, which was sixteen miles off, and that delaying the ceremony till next day would have been prejudicial to their caste.

The law officer of the Court of Circuit was of opinion, that the prisoners, deserved punishment by *Acoobut*, as although there might be no formal rule requiring that information should be previously given to the Thana, such was generally understood and acted up to. The Judge of Circuit, in referring the case, expressed his opinion, that the penalty, if any, ought to be very light; and stated, that as the case was of a novel kind, and involved a subject of a delicate nature, he had thought it advisable to refer it for the orders of the superior Court. A fine of rupees 25, had been imposed by the acting Magistrate upon the Darogha of the Thana, and this, the Judge of Circuit thought, ought to be remitted, as he saw no blame imputable to that officer in the case.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners of having been accomplices in the sacrifice of the mother of Mungul Rai on the funeral pile of her husband, in opposition to the orders of Government, and without giving previous notice at the Thana, and declared them liable to correction at the discretion of the ruling power. The Court, however, (present W. Leycester,) observing that no orders of the kind supposed had existence, acquitted the prisoners, and directed their immediate release. The Court observed, that the Magistrate had imposed a fine of 25 rupees on the police Darogha; but seeing no ground whatever to impute any neglect to the officer in question on this occasion, directed that the fine should be remitted, and its amount restored to him; and that the Magistrate should call on the Daroghas to require the Chowkeedars, or any of them in their division, to proceed from their village without delay, whenever they might have reasonable ground to suppose that a *suttee* was in contemplation, in order to furnish information at the Thana, instead of delaying, as in the present instance, till the day after the sacrifice had taken place.

1822.

June 10th.

GUNGABISHEN'S case.

GOVERNMENT,
against
GUNGABISHEN.
Charge—PERJURY.

A deposition wrongly taken on oath by a Magistrate, not allowed, as such, to affect the prisoner. Acquittal of perjury,

THE prisoner Gungabishen was charged with perjury, and tried for that offence at the 1st sessions of 1822, for zillah Allahabad. The prisoner was first taken up on a charge of aiding in a robbery, but being acquitted of that offence, was examined on the 19th of April, as a witness in the case. In his examination on the charge of robbery, he stated, that one Nunneh was concerned in the robbery, and that he recognized him. In his examination on oath (after being acquitted) he excluded the said Nunneh from participation in the crime, and denied having recognized him, alleging that he took his name at the

1822.

GUNGA BISHEN'S case.

instigation of his employer, to whom the money plundered belonged. On the 26th of April, as appeared by a proceeding in the case, the prisoner (whether he was a prisoner at that time, the record did not shew) came forward and acknowledged, that in his former deposition he had not stated facts as they really had taken place, but was now ready to do so. He was accordingly re-examined on oath, and stated that Nunneh was among the persons who robbed him of the money, and that he denied this point before, as Nunneh had induced him to do so. under the circumstances.

The law officer of the Court of Circuit convicted the prisoner of perjury, and declared him liable to *Acoobut*. The Judge of Circuit stated, that he did not concur in this conviction, considering his confession, or second examination, (which was the only proof against him,) to have been made under an impression of fear. There was something objectionable too, he observed, in taking his second deposition or examination on oath, under the circumstances mentioned in the Magistrate's proceeding of the 26th of April. With this impression on his mind, he consequently submitted the trial for the final orders of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Gungabishen of perjury, and declared him liable to discretionary punishment by *Acoobut*. By the Court. W. Dorin, (officiating Judge.) "I am for acquitting this prisoner of the perjury charged. It is charged to have been made in his deposition as a witness, bearing date the 19th of April. I am not satisfied that the deposition in question is false. The examination on oath of the 26th of April, which contains a contradiction of it, should not have been taken on oath, and the Magistrate should be so told; it is not at all improbable, that the prisoner may have been influenced then by fear to say what he thought he was wished to say. Properly speaking, we ought to have had the Magistrate's proceedings on the charge of robbery, as well as those on the present charge of perjury." The second Judge (C. Smith) concurring in the acquittal of the prisoner, he was ordered to be released; and the Court at the same time remarked, for the future guidance of the Magistrate of Allahabad, that it was erroneous to take on oath the prisoner's examination of the 26th of April 1822, which examination too the Magistrate had attested as a confession.

1822.
June 10th.
MEERAN SHAH'S case.

MUSST. ACHNOO,
against
MEERAN SHAH.

Charge—RAPE.

It is not necessary, under Regulation XVII. of 1817, to refer to the Nizamut Adawlut a trial for rape, unless the Circuit Judge and his law officer be of opinion that the offence was actually consummated.

THIS trial came on at the 1st session of 1822, for zillah Aligurh. The prisoner, a man upwards of 30 years of age, seized hold of Musst. Dewah, a child under four years of age, and carrying her into the jungle, attempted to commit a rape on her body, by which he tore and seriously injured the infant. Musst. Achnoo, the prosecutrix, having missed her daughter in the evening, it was feared that she had been carried off by a wolf; but upon search being made for her, the prisoner brought her into the village in his arms. The child having been taken to a light, it was perceived that her clothes were stained with blood; and upon the prisoner's being questioned, he admitted, that in a fit of drunkenness, he had committed a rape on the child. His own clothes also were stained with marks of blood. Being taken to the Thana on the 15th of January 1822, the prisoner confessed there, that on the preceding evening he had committed a rape on Musst. Dewah. That confession was satisfactorily proved before the Court of Circuit. The prisoner also admitted before the officiating Magistrate, that he, being drunk, took the child with him, and did not know what he had done to her; further, that the marks of blood seen on his clothes came there from having carried the infant. Before the Court he stated, that he did not know whether or not he took the child with him. The child having been examined by Badoolla, a native surgeon, at the Thana, it appeared that she had been wounded and much injured.

The law officer of the Court of Circuit convicted the prisoner on violent presumption, grounded on his proved confession at the Thana, and the circumstances of the case, of an attempt to commit a rape on Mussummaut Dewah, an infant about four years of age, by which she was wounded and seriously injured. In this conviction the Judge of Circuit concurred, and forwarded his proceedings on the trial for the information and orders of the Nizamut Adawlut.

The *futwa* of two of the law officers of the Nizamut Adawlut recited, that the prisoner Meeran Shah was convicted, on strong presumption, of a rape on the person of Musst. Dewah, a child four years of age, and declared him liable to discretionary punishment by *Acoobut*. By the Court. W. Dorin, (officiating Judge.) "I think the conviction in this case should be for the attempt to commit a rape, and not for the absolute commission, which our *futwa* finds. I would adjudge five years imprisonment with hard labour, and stripes. But why did the Circuit Judge refer the case? Neither he nor his law officer convict of rape, so that the order for referring all cases of rape, in Regulation XVII. 1817, does not become applicable; and for the attempt to commit rape, he should not have referred the case, unless he considered seven years imprisonment, and stripes, an insufficient sentence. Are we to presume that he so considered it?"

1822.
MEHRAN SHAH'S case.

The second Judge (C. Smith) observed, that his deeming seven years imprisonment insufficient punishment was the only proper ground of reference by the Circuit Judge; and this, if it was the ground, should have been explicitly stated in the letter.

The Court (present C. Smith and W. Dorin) considering the prisoner convicted by the evidence, of an attempt only to commit a rape on the person of the said child, sentenced him to receive twenty-five stripes of the *corah*, and to be imprisoned with hard labour for five years. The Court observed, that the *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of an attempt to commit rape, and that the Circuit Judge, in referring the case, expressed his concurrence in that *futwa*; and that the Court presumed, therefore, that the Circuit Judge referred the trial, considering the punishment authorized by clause 7, section 2, Regulation LIII. to be insufficient.

POHUP, *against* RUNJEET.

1822.
June 10th.
RUNJEET'S case.

Charge—MURDER.

THE prisoner Runjeet was tried for the murder of his brother, at the 1st sessions of 1822, for zillah Aligurh. The case was in substance as follows. On the 4th of December 1814, the corpse of Hunsraj was found hid under a heap of grain, in a field of Mouza Kanda, bearing fifteen sword and spear wounds upon it. Information being taken to the Thana of Jellaser, the Thanadar proceeded to the spot, held an inquest on the body, and apprehended various persons on suspicion. Whilst the enquiry was still going on, the Thanadar reported, on the 3d of January 1815, that he had learned from Runjeet, Bageerutta, and others, that the prisoner Runjeet had murdered his brother Hunsraj, because the latter had been intimate with his (Runjeet's) wife; and further, that after the murder Runjeet had fled to his sister's house in Mouza Kellana, zillah Agra, and had told his sister and others of the deed; and that in consequence the people of that village had insisted on his leaving them. Orders having been issued to the surrounding Thanadars, directing them to apprehend Runjeet, the prisoner was apprehended on the 10th of September 1821, in the jurisdiction of the Souk Thana, zillah Agra; and there confessed, that having had a quarrel with his brother Hunsraj about matters of cultivation, Hunsraj struck him with a club, and he wounded Hunsraj in return by a blow with his sword on the side, which killed him. The prisoner also confessed before the Magistrate of Agra to the same effect, except that he qualified the confession by stating, that his sword was in the scabbard when he struck, but cut through it. Both these confessions were proved before the Court of Circuit. Before the officiating Magistrate of Aligurh, as also before the Court of Circuit, the prisoner denied the charge.

The prisoner confessed the homicide of his brother, after having received a blow from him; and the *futwa* therefore finds that the act was done in self defence. There was no eye witness; but, from other circumstances, independant of the confession, the Court inferring wilful murder, sentenced him to imprisonment for life.

1822.
RUNJEET'S case.

The law officers of the Court of Circuit convicted the prisoner Runjeet on his proved confessions of the wilful murder of Hunsraj, his own brother, rejecting the assertion on the part of the prisoner, of having first been struck by Hunsraj with a club; and declared him liable to suffer death by *Kissas*. The Judge of Circuit concurred with the law officer in the conviction of the prisoner of wilful murder, and was of opinion, that there were no grounds for supposing that the deceased first struck the prisoner, though the cause of the murder was not ascertained; but that the corpse, from the number of wounds upon it, bore evidence of the intention to kill on the part of the person who inflicted the wounds. The Judge of Circuit further stated, that he was not aware of any circumstance which could be urged in mitigation of punishment.

The prisoner Runjeet was declared by the *futwa* of two of the law officers of the Nizamut Adawlut to be not convicted, and to be entitled to release. By the Court. W. Dorin, (officiating Judge.) "This is rather an extraordinary case. The act was committed seven years ago, and the prisoner, a *putteedar* of the Mouza where it occurred, has since been a wanderer. The first suspicion seems to have fallen on another, who was supposed to be a rival of the deceased. There is, however, no doubt (in my mind) that the prisoner killed his brother Hunsraj. His confession implies that the deceased first struck him with a stick *(chobdust)*, and then he killed the deceased with his sword. The inquest recites, that the body was much mangled, and that there were also spear wounds. Our law officers find it to be homicide in self-defence. I should have viewed it at the least as culpable homicide, and think it will have a bad effect, if the man gets off; yet is it a proper occasion to go against the *futwa?* The case has not been well tried. The evidence of the prosecutor Pohup, judging by what he had stated at the Thana, (January 2d, 1825,) and in the Foujdaree, (January 13th, 1825,) was material. His statements went to the facts of his two sons having gone out together in the afternoon of one day, of the defendant having from that time absconded, and of the body of the other having been discovered next day. These facts necessarily raise a suspicion of murder; and if the prisoner had said nothing, would have left a strong case against him. It is highly favourable to him to admit his confessions; and, as we have no evidence of enmity between the brothers, it may possibly have been a sudden quarrel, ending in bloodshed. Some witnesses have given false evidence for the prisoner, in saying he left the Mouza *mad* before the affair. What story the prisoner told to those with whom he first took refuge, does not appear." C. Smith, (second Judge.) "I think there is a strong presumption that the prisoner murdered his brother, and am of opinion that the *futwa* should be superseded, under section 4, Regulation XVII. 1817, and the prisoner be imprisoned for life in the Aligurh jail." The 3d Judge (S. T. Goad) concurring, the prisoner was sentenced accordingly.

1822.

June 10th. Case of SHAM HAREE and others.

KARDEE,
against
SHAM HAREE and fifteen others.

Charge—DACOITY.

It is irregular in a Judge of Circuit to enter into any examination of a prisoner as to his confession, beyond his simple avowal or denial of the same.

THE prisoner Sham Haree and fifteen others, were charged with Dacoity, and tried for that offence at the first sessions of 1821, for Zillah Rungpore.

A gang of Dacoits, on the night of the 2d of May 1821, entered the prosecutor's house, seized his father, and slightly burnt him in six or seven places; desiring him to point out where he had concealed his money. They were armed with clubs, and had two lighted torches, which they left behind. The amount of the property carried away was estimated at only fourteen rupees. It appeared, that on the Darogha's arrival at the spot, he immediately endeavoured to find out the owner of one of the torches, from its being more regularly made than those generally used by Dacoits; and a person named Bulla Haree informed him that it belonged to Sham Haree, who was in consequence apprehended, and who made a voluntary confession, in which he implicated the rest of the prisoners. The whole of these prisoners also confessed, and repeated their confessions to the joint Magistrate; and Narputtoo, Sookaroo, Kumul Das, Sudoo, and Sulloo delivered up, each of them, some of the articles which had been plundered from the prosecutor. The prosecutor's father was alleged to have recovered from his wounds, but to have died nine months after the Dacoity occurred of the Cholera Morbus.

The *futwa* of the law officer of the Court of Circuit convicted all the prisoners of Dacoity, concurring with which the Judge of Circuit sentenced each of them to receive thirty-nine stripes of a *corah*, and to be imprisoned and transported for life; transmitting the proceedings, at the same time, for the final orders of the superior Court.

The prisoners Sham Haree, Narputtoo, Ban Bhasa, Bhekaree, Sookaroo, Kumul Das, Dopuhrea, Sudoo, Bhulka, Badeea, Sulloo, and Khuroo, having been convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of the crime of gang robbery attended with the torture of the prosecutor's father by burning, and declared liable to discretionary punishment by *Acoobut*, and having been sentenced by the Judge of Circuit, each to receive 39 strokes of the *corah*, and to imprisonment in transportation for life, the Court of Nizamut Adawlut (present S. T. Goad and J. Shakespear) confirmed the said sentence.

The Court observed further, that the 3d Judge, after calling upon the prisoners for their defence, put the whole of them through an examination; and after recording their denial of the confession given by them before the Darogha and joint Magistrate, read the several confessions over to each prisoner, and again questioned them as to their having made such confessions or not. This mode of proceeding, the Court remarked, is at variance with the rules laid down in Regula-

1822.
Case of SHAM HAREE and others.

tion IX. of 1793, serves to lengthen the record of a trial unnecessarily, and must consume a large portion of the time of a Judge of Circuit, without conducing to any good end. The Court therefore desired that the 3d Judge would discontinue this practice in future, and adhere closely to the mode of proceeding laid down in the Regulation above quoted.

1822.
July 20th.
Case of ARATOON and others.

GOVERNMENT,
against
ARATOON and two others.

Charge—FORGERY.

A prisoner convicted of preparing an earthen mould, with a view to forgery of copper coin. Sentenced to two years imprisonment.

THE prisoner Aratoon was charged with counterfeiting the coin of the country, and the prisoners Kartick and Rajkishore with being privy to the crime, and giving currency to base coin, knowing it to be counterfeit. The case was tried at the Moorshedabad city sessions, for April 1822. It appeared in evidence, that on searching the prisoners (who were convicts) in the month of November, 1821, as was customary every week, to prevent any files, or other articles which it is improper for them to have, being taken into the jail, an earthen mould, such as might be used for counterfeiting the coin of the country, (it was however incomplete,) was found upon the prisoner Aratoon, and deposited, with other property kept in the guard room, of the Burkundazes at the jail. Early in the month of January following, a potter who was passing near the jail, accused Kartick of giving him some bad pice in payment for an earthen pot, which were afterwards changed for cowries by Rajkishore. Some counterfeit pice made of lead were produced on the trial, which were supposed to be those paid by Kartick to the potter, and received back from him in exchange for cowries by Rajkishore; but this point was not fully established. That pice or other coin had been counterfeited in the jail with the connivance of the Darogha and others, the Judge of Circuit thought highly probable, and he directed the Magistrate to make enquiries into the matter; but he did not think there was proof against the prisoners committed in the present case which could authorize conviction.

The law officer of the Court of Circuit declared in his *futwa*, that Aratoon was convicted of counterfeiting pice, and Kartick and Rajkishore of being parties concerned in the same, and in giving currency to them. In this *futwa* the Judge of Circuit not agreeing, forwarded the case for the final orders of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Aratoon upon strong presumption of preparing an earthen mould with an intent to counterfeit coin, and declared him liable to discretionary punishment by *Acoobut*. The Court

(present C. Smith and J. Shakespear) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Aratoon to imprisonment for two years from the expiration of the term for which he was then confined. The *futwa* acquitted the prisoners Kartick and Rajkishore, and the Court, concurring therein, directed their immediate release.

1822. Case of ARATOON and others.

BORA,
against
SOODUN MOONDA.

1822. July 22d. SOODUN MOONDA'S case.

Charge—MURDER.

THE trial of this prisoner, who was charged with murder, came on at the 1st sessions of 1822, for zillah Ramgurh. It appeared from the deposition of the prosecutor, that a sudden dispute took place between the parties, in the same village, about a ceremony customary amongst people of the Kole cast, who on such occasions assemble and dance. The party to which the prisoner belonged had all collected, and were dancing, when the prosecutor's party wished to have the ceremony postponed, on which the prisoner struck the deceased with a club on the head, which felled him to the ground. He was carried home, and died sixteen days after, and this statement was fully corroborated by several witnesses. The prisoner, in his examination at the Thana and before the Magistrate, admitted having given the deceased the blow which caused his death, but said he did so in consequence of having been first attacked and beaten by the prosecutor's party. His witnesses, however, did not state that this was the case.

Prisoner having struck the deceased a blow with a club in the passion of the moment, without previous enmity, in a quarrel about a *pooja*, the law officers convicted him of wilful murder, but the Court viewed it as a case of culpable homicide only.

The law officer of the Court of Circuit in his *futwa* declared the prisoner convicted of wilful murder, and liable to *Kissas*. The Judge of Circuit was of opinion, that there could be no doubt that the blow given by the prisoner to the deceased caused his death; but from the prosecutor's own story, he was induced to think that the prisoner, provoked at the interruption given to the dancing by the prosecutor's party, struck the deceased in the heat of passion, and that the blow was probably more severe than he intended. Under these circumstances, and as it appeared that no previous enmity existed between the deceased and the prisoner, the Judge expressed a hope, that the superior Court would consider him to have only incurred the penalty of culpable homicide, and sentence him to imprisonment for a limited period.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the species of murder termed *Kutl i Umd*, and declared him liable to *Kissas*. The Court (present C. Smith and W. Dorin) concurred in the *futwa*, so far as regarded the fact of homicide being established against the prisoner by the evidence; but as the death of the deceased was caused by a blow struck

1822.
SOODUN MOONDA'S case.

by the prisoner with a club in the passion of the moment, and without previous enmity, on a quarrel between the prosecutor's and the prisoner's party regarding a *pooja*, the Court considered the case to be one of culpable homicide only; and under all the circumstances, adjudged the prisoner Soodun Moonda to be imprisoned with labour for seven years.

1822.
July 22d.
JUGJEET SINGH'S case.

RUTTUN,
against
JUGJEET SINGH.
Charge—MURDER.

It being proved that a woman met her death in consequence of ill usage and confinement by the prisoner or under his orders, on the imputation of being a witch, the prisoner was sentenced, under all the circumstances of the case, to seven years imprisonment with labour.

THE prisoner was charged with having forcibly carried off the prosecutor's wife, on an accusation of witchcraft, and caused her death, after six days confinement, the body having been found hung on a *beir* tree. The trial came on at the 1st sessions of 1822, for zillah Ramgurh. The law officer of the Court of Circuit declared the prisoner convicted in this case on strong presumption of having caused the death of the prosecutor's wife, and having had her hung by the neck on a tree, either before or after her death, on an accusation of witchcraft, and declared him liable to discretionary punishment by *Seasut*. It appeared from the statement of the prosecutor, corroborated by the evidence of several persons, that the prisoner, who is head of a village in Chota Nagpore, had a sick child, whose illness he considered had been caused by the incantations of the prosecutor's wife; in consequence of which he had her seized, and confined in the stocks; that on the seventh day she was found dead, hung by the neck to a tree, and that some of the witnesses on the same day buried the body near a nullah by order of the prisoner.

The witnesses, the Judge of Circuit observed, seemed inclined to conceal a part of what they knew of the transaction, as it was more than probable they were themselves accessaries; but he saw no reason to doubt the truth of their statement as far as it went, and from which might be collected, that the prisoner seized the prosecutor's wife, and confined her in the stocks, on a charge of witchcraft; that she was found dead on the seventh day, hung by the neck on a tree; that the prisoner desired some of the witnesses to bury the body, which was afterwards removed; and that he neither gave information of the circumstance to the police, nor any explanation to the prosecutor of what had become of the deceased. It was possible, he added, the deceased might have died of some disease during the six days she was kept in confinement by the prisoner; but that, if this had been the case, he would have no doubt urged it in his defence: and the Judge therefore thought there was strong reason to believe, that the prisoner had the deceased hung as a witch, or caused her death by ill treatment in confinement on a charge of witchcraft, in either of which cases he must be considered a principal in the murder.

1822.

JUGJEET SINGH'S case.

The *futwa* of two of the law officers of the Nizamut Adawlut declared it established on strong presumption, that the deceased woman met her death in consequence of confinement and ill usage by the prisoner Jugjeet Singh, or under his orders, on the imputation of being a witch, and of having by witchcraft brought sickness on his (the prisoner's) daughter; and stated the prisoner to be liable to discretionary puniahment by *Acoobut* for the offence. By the Court. W. Dorin, (officiating Judge.) "The evidence in this case is scanty. I think, from that evidence, and the presumptions which the case furnishes, the best conclusion to draw is, that the deceased woman met her death by reason of ill-usage, while under confinement by the prisoner Jugjeet, on charge of being a witch, and of having by witchcraft brought sickness on his (Jugjeet's) daughter. The defence attempted to be set up, that the woman hanged herself, I do not believe, neither do I think that she died by hanging. The prisoner seems to have been head man of the Mouza where it took place. His forcing the woman from her own house to his, is deposed to by the prosecutor and the witness Hitcha, as well as his confining her several days in the stocks; and, as to the stocks, the story is further supported by the deposition of Ruhsa (now dead) before the Magistrate. No enquiry seems to have been set on foot by the prisoner on its being reported to him that the body was found hanging, and no report made to the police. I think, therefore, there is strong presumption that she died by reason of his ill-treatment on the imputation of being a witch. The ill-treatment may not have been with a design of killing her, and the hanging up the body was probably with a view of assigning another reason for her death. I would treat it is a case short of murder, but an aggravated one of culpable homicide by the prisoner." The second Judge (C. Smith) concurring with his colleague in the above view of the case, the prisoner was sentenced to be imprisoned with hard labour for seven years.

1822.

July 31st.

OODIT AGURDANEE'S case.

SUROOPCHUND AGURDANEE, *against* OODIT AGURDANEE.

Charge—MURDER.

THE prisoner was tried for murder, so far back as the 5th September 1805. Mowlovee Gholam Hoosein, the law officer who presided on that occasion, stated in his *futwa*, "that from the prisoner's confession before the Magistrate, it is proved, that he murdered the son of the prosecutor when he was sane, and therefore *Kissas* cannot be barred; but as he is now deranged, and as it does not appear that he is feigning madness, it is at present necessary that he should be sent to the hospital for the sake of being cured." Mr. Wintle, the Judge of Circuit presiding at the trial, concurred with the law officer, and

In a case of supervenient insanity after the commission of a murder perpetrated by the prisoner while sane,

1822.

ODDIT AGURDANEE'S case.

the Court did not think fit to apply the rule contained in Regulation IV. 1822, the offence having been committed long prior to that enactment, but deeming the prisoner unfit to be set at liberty, directed his detention, until on its being certified that he might be released without danger, they should issue further orders regarding him.

ordered that a precept should be transmitted to the Magistrate, directing him to send the prisoner to the hospital, to be there under the charge of the surgeon; and when he was perfectly recovered, to intimate the same to the Judge on circuit. The prisoner escaped from jail on the 6th of March 1811, and was reapprehended on the 6th of May in the same year. For this act Mr. Chapman, the assistant Magistrate, committed him to the Court of Circuit, and he was a second time brought before Mr. Wintle. The case was, however, expunged from the calendar for the reasons stated in that gentleman's proceeding, dated the 18th of April 1812. On the 15th of October 1817, the prisoner, together with several others, was sent to the insane hopital at the Presidency. Mr. Young, the Surgeon, having reported to the Magistrate of the suburbs that the prisoner was fully cured, he was accordingly directed, on the 29th of January 1819, to be sent back to the Magistrate of Nuddea, in whose custody he was placed on the 11th of February following; from which time, owing to some oversight on the part of the Magistrate, the circumstances relating to the prisoner's case were not brought to the notice of the Court of Circuit. In July 1821, he again tried to effect his escape from jail, by digging a hole in the wall contiguous to the place where he usually cooked his victuals. He was, however, detected, and punished by the Magistrate with ten rattans, and ordered to have heavy irons put on his legs.

In referring this case for the final orders of the Nizamut Adawlut, the Judge of Circuit observed, that as the Surgeon of the station only arrived on the 25th of the month, he had had no opportunity of ascertaining from him the real state of the prisoner's mind at that period.

The officiating Judge of the Nizamut Adawlut (W. Dorin) recorded his opinion in these terms. "At the time this man was tried in 1805, he to all appearance had lost his senses, *since* the commission of the act charged against him. I think it sufficiently made out by the evidence on the trial, that he murdered the boy Govind (son of Suroop Agurdanee) for the sake of his ornaments; that he was not mad when he committed the act, and had not been mad before. He was remanded at the trial, with an order to bring him again when well. In the interval, he appears once to have escaped, and once to have been caught in an attempt to escape. The *futwa* declares, (and I cannot call it unreasonable,) that the evidence given on the trial to the prisoner's confessions of the fact, he having been then insane, and incompetent to question the witnesses, will not avail against him. There seems no alternative, (for though the evidence would satisfy me as it is, the point of form is material,) but to have the witnesses re-examined, if they be alive. It will possibly end in the release of the man, or at all events, according to the doctrine of our law officers, intervenient insanity would prevent punishment, agreeably to the doctrine laid down in a recent case. I would not, after such an interval, sentence this man capitally; but I think it would be mischievous, if he ever were let out again. I would suggest that the Judge of Circuit be directed to re-examine the witnesses; and also to forward

1822.

ODDIT AGURDANEE'S case.

a certificate by the Surgeon of the present state of the prisoner's mind, or rather to examine the Surgeon on the point, and also to forward the Surgeon's account of him, (if there was any written one,) when the Magistrate of the suburbs sent him back to Nuddea, recording in his *roobecarry* of the 29th, January 1819, "that the Surgeon had reported him well." Being joined in this opinion by the chief Judge (W. Leycester), instructions were issued accordingly.

The prisoner, at the ensuing sessions, having been proved to be perfectly sane, underwent his trial for the crime with which he was charged. The *futwa* of the law officer of the Court of Circuit convicted the prisoner of having committed the murder whilst in a sane state of mind, and declared him liable to *Deeut, Kissas* being barred in consequence of his subsequent insanity.

In submitting the trial for the final orders of the Nizamut Adawlut, the Judge of Circuit made the following remarks. "I entirely concur in the conviction of the prisoner, and it is not in my province to find fault with the award, as it has been given conformably to the Moosulmaun law; but at the same time I must observe, that I consider the crime which has been brought home to the prisoner deserving of death, and that his very long confinement alone entitles him to the merciful consideration of the superior Court; on which account I should consider a sentence of perpetual imprisonment as heavy a punishment as ought now to be inflicted on him. The lengthened confinement of the prisoner has, as the superior Court will observe, created no small degree of commiseration amongst his old neighbours; and that not only the new witnesses named on the trial before this Court by the prisoner, but even those who were examined 16 years ago, depose to the insanity of the prisoner previous to the date on which he is accused of committing this murder. I cannot give credit to what has now appeared in evidence on the subject of the prisoner's insanity, as the whole of the witnesses examined by Mr. Wintle declared that he was never even suspected of being insane; many of whom were of the same caste with the prisoner, and well acquainted with him: at all events, it has been proved that he was perfectly sane at the time he committed the murder, which he confessed a few hours after he had perpetrated it; and from the Magistrate's proceedings, it is evident that he shewed no symptoms of madness until after his commitment for trial before this Court. The only circumstance that pleads in favour of the prisoner is the letter from Doctor Haig. I believe Doctor Haig was a most respectable man, and would not have stated a circumstance which he did not fully credit himself; but he has left no clue by which it could be ascertained how he came by his information, (that is, the names of his informants,) nor what induced him to make the inquiry in the mode adopted by him, instead of through the Magistrate. I shall not be sorry if the superior Court discredit the former evidence given in this case, and determine that the prisoner was insane when he committed the murder."

1822.

ODDIT AGURDANEE'S case.

The final orders, in this case, of the Nizamut Adawlut (present W. Leycester and W. Dorin) were to the following effect. "The Court observe, that the act charged against the prisoner appears to have taken place in the year 1805; that the prisoner was brought to trial for it at the 2d sessions of 1805, and was remanded by the Circuit Judge, on the ground of his being then insane, without any sentence being passed; the Circuit *futwa* having found, that he committed the murder when in a state of sanity; and was insane at the time of trial; and should be taken medical charge of. The Judge of Circuit so directed accordingly; with an order, that on his recovery, intimation should be given of it to the Court of Circuit. At the second sessions of 1821, he was reported sane, and his case laid before the Judge on Circuit, and by him referred for the sentence of the Nizamut Adawlut, who directed a re-trial, on the ground that the prisoner was insane when put on trial before. The Court having now duly considered the proceedings held on the re-trial of the prisoner, and the *futwa* of their law officers thereon, pass the following orders. The *futwa* of two of the law officers of the Nizamut Adawlut declares it established, that the prisoner killed the deceased boy by strangling; but that, as there appears a doubt of his sanity before the act, and he was long insane in jail after the act, there is a doubt of his sanity at the time the act took place, and *Kissas* being barred, he is liable only to *Deeut*. The Court concur in the prisoner's conviction of the act charged, but not in the doubt of his sanity when he committed it. As under the *futwa* the prisoner is not a fit subject of punishment, and the date of Regulation IV. 1822, is long subsequent to the commission of the act, and under all the circumstances of the case, the above Regulation does not seem properly applicable, the Court, presuming that the prisoner must be an unfit person to be at large, direct that he be held in confinement until the Magistrate may be able to certify that no danger is likely to arise from his enlargement, on the receipt of which report the Court will issue further orders regarding the prisoner*.

* Taking the *futwa* as it stands, the prisoner was, according to it, not a proper object of punishment; and it had been doubted whether under Regulation XVII. 1817, section 4, the Court were competent to go against the *futwa* in such cases, where there is not only a mere question of fact as to conviction or acquittal, but a doctrine of Moohummudan law connected with questions of insanity, also involved. This led to the enactment of Regulation IV. 1822, to obviate the effect of such *futwas* in future.

The order regarding the prisoner (on whom no penal sentence was passed) ran thus. "The Court direct that the prisoner be detained in custody until the Magistrate shall be satisfied that his sanity is permanently re-established; and that he be not then discharged, unless his friends or relations shall enter into security to take such charge of him as may prevent his doing further mischief. No order will be given for the prisoner's discharge without a previous reference to this Court."

GHUREEB DAS, *against* CHURUN DAS.

1822.
Aug. 7th.
CHURUN DAS's case.

Charge—MURDER.

On a conviction of murder, capital sentence remitted, in consideration of the prisoner's being irritated by the deceased calling him a thief.

THIS trial came on at the Bareilly monthly sessions for May, 1822. The case was as follows. The prisoner Churun Das is a Byragee, and in wandering about the country reached the *asthul* or place of worship of Balluck Das Byragee, on the 16th of April, 1822. The next day he was accused by Toolsee Das, a Byragee, who had been residing at the *asthul* for several days, of having stolen some grain, and many angry words were interchanged by those two persons in the presence of Balluck Das, who left them to go into his fields, at 12 o'clock. In the evening he heard a hue and cry, that a murder had been committed at his *asthul;* and hastening home, he found the corpse of Toolsee Das at his door, with many wounds about the head, face, and neck. The prisoner Churun Das was also there, and attempting to make his escape, was pursued by Balluck Das and several others, and being seized, the hilt of Balluck Das's sword was found in his hand; and the blade, stained with blood, was afterwards found on the ground over which he had run. It appeared, that on the prisoner's taking the sword out of Balluck Das's house, a female of the family fled to a neighbouring village, and gave the alarm. The prisoner confessed before the Thanadar, before the officiating Magistrate, and before the Court of Circuit, with very little variation, that Toolsee Das, having accused him of theft, and given him abuse, he went into the house, and bringing out Balluck Das's sword, killed Toolsee Das by inflicting several wounds about his head and neck. In his confession before the joint Magistrate, the prisoner distinctly stated, that the deceased was in the act of washing his plates, at the time that he (Churun Das) attacked him with the sword.

The law officer of the Court of Circuit convicted the prisoner Churun Das of the wilful murder of Toolsee Das, and declared him subject to death by *Kissas*. In this *futwa* the Judge of Circuit concurred. The prisoner appeared, he observed, to have a great indifference for his own life, so much so, that it might induce a suspicion of something like insanity, if it were not generally the case, with that description of people called Byragees: with the exception of this indifference, there were no grounds, in his opinion, for supposing him at all deranged. He therefore did not feel himself justified in urging any thing in extenuation of punishment.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Churun Das of the murder of Toolsee Das, and declared him liable to capital punishment by *Kissas*. The Court (present W. Leycester) fully concurred in the conviction; and taking into consideration the circumstances of irritation, under which the act was committed, sentenced the said prisoner to perpetual imprisonment in the jail at Allipore.

1822.
Aug. 13th.
AMANUT ALLY'S case.

SHEIKH ZEA OOLLAH,
against
AMANUT ALLY.

Charge—MURDER.

Prisoner acquitted of the charge of murdering his concubine, in spite of strong suspicion against him arising from circumstantial evidence.

THE trial of the abovenamed prisoner was held at the 1st sessions of 1821, for zillah Ramgurh. The prosecutor in this case deposed, that his daughter Musst. Pearun went to live with the prisoner Sheikh Amanut, about 5 years before, by whom she had a daughter, named Coolaro, then about four years of age; that on the 8th of Phagoon, corresponding with the 14th February 1822, this child was brought, and left at his (the prosecutor's) house by Musst. Chummelea, a woman who also lived with Sheikh Amanut; but that he did not see her at the time. The child, however, afterwards told him, that her father had murdered her mother Musst. Pearun, by cutting her throat; and that Musst. Chummelea assisted him. The prosecutor on this immediately went to the house, which he found shut; but on entering, saw the body of Musst. Pearun with the head nearly severed from it, and without delay sent information to the Thanadar, who came and held an inquest, and apprehended Musst. Chummelea. Amanut Ally, it appeared, went soon after this to the Thana of his own accord, and on being taken into custody, said he suspected his brother had committed the murder. On being afterwards brought before the Magistrate, he said he was not in the house when Musst. Pearun was murdered, he having gone out at the time; but on his return, he found the dead body, and immediately went towards the Thana, distant 5 coss. He also admitted, that a pair of shoes covered with blood, found near the *charpai* on which the body was lying, were his; and further stated, that he suspected a person named Kadir Buksh had an intrigue with Musst. Pearun. His statement, however, before the Thanadar and the Magistrate differed considerably. The child of four years of age, whose evidence was not taken on oath, as she did not understand the nature of it, was the only person who admitted having been present when the murder was perpetrated. Musst. Chummelea denied all knowledge of it. The rest of the witnesses were merely evidences to the inquest and the examination of the prisoner at the Thana.

The law officer of the Court of Circuit in his *futwa* declared, that there was not evidence sufficient to convict either of the prisoners, although there was suspicion against Sheikh Amanut. The Judge of Circuit observed, that there was no direct proof against Sheikh Amanut, as the evidence of the child was inadmissible; but that the presumptive evidence against him, arising from the circumstances of his shoes having been found covered with blood close to where the body was lying, which he admitted, but could not satisfactorily account for; his having, on seeing the body, gone towards the Thana, instead of calling in the neighbours; and the very contradictory and improbable account he gave at the Thana, before the Magistrate, and

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AMANUT ALLY'S case.

the Court of Circuit, together with his admission that he suspected an intrigue between the deceased and a person named Kadir Buksh, rendered the presumption of his guilt so strong in the Judge's mind, that he had been induced to refer the case for the consideration of the superior Court. As there was no evidence, he added, of the guilt of Musst. Chummelea except the assertion of the child, he had issued a warrant for her immediate release.

The *futwa* of two of the law officers of the Nizamut Adawlut acquitted the prisoner of the murder charged against him. By the Court. C. Smith, (Second Judge.) "On the ground of the circumstantial evidence detailed in the Judge of Circuit's letter, and the utter improbability of Pearun having been murdered by any one else, I am of opinion that the prisoner is guilty of the charge. I would not sentence him capitally against both *futwas*; but I would, under section 4, Regulation XVII. 1817, supersede our *futwa*, and sentence him to perpetual imprisonment in the Sheherghautty jail."

J. Shakespear, (fourth Judge.) "I think there are strong grounds of suspicion, but I agree with the *futwas* in thinking that the evidence is not sufficiently clear to justify conviction." The case was therefore referred to a third Judge, and the evidence was commented on by the officiating Judge, W. Dorin, in the following terms. "The sum of what appears against the prisoner is this. The deceased woman lived with him as a concubine: he seems to have suspected that one Kadir had an intrigue with her, and he had seen her looking over the wall at the time of the Mohurrum: he says, that when, on coming in one evening, he found the woman killed, he went forthwith towards the Thana; but he neither told, nor called in any neighbour. He took 24 hours to arrive at the Thana, 5 coss off, arriving the morning of the succeeding day. The child 5 years old says, (and told the prosecutor so, he first receiving the intelligence of the death from her,) that she saw the prisoner kill the deceased her mother, and Chummelea (a second prisoner acquitted) helping; which Chummelea, the prosecutor says, took the child home to his house on the evening of the murder; but was not seen by him, he being then out. A pair of shoes are stated to have been found bloody near the *charpai*, and to belong to the prisoner. The fact of their being bloody appears only from the Darogha's report: from no evidence on the record. Now it is possible the woman Chummelea (the second concubine of Amanut) may have killed the deceased, by cutting her throat while asleep; and for such an act from her we can imagine sufficient motive; and the shoes, if they were bloody, may have been so without Amanut being concerned; they may have been lying in the way; and the prosecutor says the house was covered with blood. Amanut certainly went to the Thana of his own accord to give information. As to the apparent delay on the road, he says he was sick; and as to the going without his shoes, (which the natives often go without,) he says he was thunderstruck at what he saw, and immediately set off to the Thana as he was. It is possible the child may have been instructed to say what she did. At all events, strictly speaking, we ought not to have heard her at all. While I allow there is strong suspicion against

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Amanut, I still think the circumstances which appear are not incompatible with his not being the person. In such a case, which to my mind affords reasonable ground of doubt as to the sufficiency of the evidence, I am for not going against the *futwa*. I do not view the prisoner's own accounts as furnishing much against him, on the score of inconsistency." The prisoner was acquitted accordingly.

1822. Aug. 31st. KESHWA DOME'S case.

NUTHOO BRAHMIN,
against
KESHWA DOME
Charge—MURDER.

Prisoner convicted of murder in revenge of the supposed exercise of witchcraft by the deceased; imprisoned for life. Capital sentence remitted, in consideration of all the circumstances of the case, and the uncivilized part of the country (Kumaoon) in which the crime was committed.

THIS trial was held at Almorah, under instructions from the officiating Judicial Secretary, dated 13th of June, 1822, and in conformity to Regulation X. 1817. In his letter which accompanied the proceedings, the following account of the case was given by the Commissioner.

This case presents a lamentable example of the powerful influence of superstition amongst a rude, uneducated people. It shews to what fatal lengths minds possessed with notions of witchcraft may be carried; how extravagant notions of superstition, implanted in youth and strengthened by tradition and general belief, are capable of giving to the most common occurrences such a colour as to lead even the mildest, most gentle dispositions to acts the most cruel and atrocious. Keshwa, the defendant, appears between 40 and 45 years old. So far from having the look of a murderer, or a ferocious savage aspect, his countenance is remarkably placid, and his whole demeanour such as to impress one with the notion of his being one of the most gentle, humble, quiet and inoffensive of human beings. The proofs of the murder in this unhappy case rest upon the confession of the prisoner, and the evidence of Mooseea Bhagtee (Rajpoot). It appears that the deceased Gunputee exercised, in the country around, the profession of a physician, every where uncertain in its practice and results, every where subject to obloquy, but amongst a rude, superstitious people, more especially hazardous. The remedies he applied consisted more of incantations and charms than of drugs; he trusted not so much to his own skill in medicine, as to his capability of appeasing angry deities. Keshwa's story is this:—"Gunputee had asked me to make him a present of a *hoorka* (a sort of tambour or drum). I told him that I had it not by me, but that it was in another village. Gunputee then returned home. Soon after, one of my sons fell sick of a *bhoot*, (from the influence of a devil.) I sent for Nuthoo, the prosecutor, and his son Gunputee to administer aid; accordingly, by means of their remedies, my son was cured. Gunputee then said, We have cured your son, and you have not given me the *hoorka*. Not long after, three of my buffaloes were sent into the jungle to pasture: they were out three months, and shewed no signs

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KESHWA DOME'S case.

of being with calf; owing to this, that whensoever a male buffalo came to my female ones, Gunputee invariably went to the spot where my buffaloes were; and after performing rites of prayer and ablution, placed his hands on them, and said, 'Now these buffaloes will become pregnant.' When my buffaloes returned to the village, my herdsman informed me that the buffalo cows would not breed, because Gunputee had put his hands on them. Gunputee then came to my house, and said, 'It is very strange that your buffalo cows are not pregnant.' It was moreover told me by my herdsman Hinwa, how Gunputee had said, 'Keshwa does not choose to oblige me by giving me the *hoorka*.' The herdsman Hinwa then went to Nuthoo, Gunputee's father, and said to him, 'The buffaloes were in the jungle for three months, and owing to the witchcraft of your son Gunputee, are not in calf. Do you admonish your son, and ask him why he is ruining Keshwa's cattle.' Nuthoo answered, that he never knew Gunputee do such a thing; but that he would inquire into the matter, and send Gunputee to Keshwa's house. However Gunputee would not come to my house, and I was obliged to send word to him, that he must take the buffaloes, or pay me their value. He replied, 'I have cured your son, in recompense of which you accuse me of witchcraft: you shall give me your buffaloes for nothing.' In saying this, he struck his hand on the ground. The herdsman Hinwa reported to me what Gunputee had said. These circumstances occurred in Asin, (September.) Two days after, my son fell sick. I dreamed that night of two black dogs and a white one coming from Gunputee's to my house. My sick son too began to exclaim, 'Dogs are biting me, save me from them.' I then went to Khoosal, Kumeer of the neighbouring village*, and told him that Nuthoo and Gunputee were destroying me with their witchcraft. The Kumeer replied, that he had no power over them: however, he came himself to my house, and saw my son. That very day, at 12 o'clock at night, I sent two men, Byzoo and Bhukhta, to Nuthoo and Gunputee's house, to say that my son was very ill, and that it was Khoosal Kumeer's desire that they should do their best to cure him. Nuthoo, though he heard what was said, would not answer: his wife declared that they were not at home. I then sacrificed two fowls and a hog, and my son got a little better. Nuthoo's wife, instead of sending Nuthoo or Gunputee, sent Lulwa, Nuthoo's eldest son. Lulwa was quite ignorant as to what was proper to be done. He threw *bichwas* (nettles) on my son. I forbade him, but he would apply the nettles, and my son died. This was in Kartick (October). Three days after, my eldest son, Bhowanee, fell sick from the same evil spirit. I went to the Kumeer again, and told him, that one of my sons was dead, and the other dying; and requested him to send a message to Nuthoo and Gunputee, begging them to forgive me. The Kumeer answered, that he had no power over Nuthoo and Gunputee, and that he himself was afraid of them: however

* A Kumeer is a sort of Chowdhree, or collector, of a small number of villages.

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the Kumeer sent Khewanee Purdhan to Nuthoo and Gunputee, cautioning them, that my son should not die. Gunputee then came to me. I said to Gunputee, 'Do your best to effect my son's cure.' He answered, 'The words you spoke caused the death of your son.' I begged him to pardon my offence, in demanding from him the price of the buffaloes. On which he took seven sorts of grain, tied them up in a piece of cloth, and offering them up in my son's name, sent the same to be deposited in the jungle: accordingly my son recovered a little. The Kumeer also sent another man skilled in enchantments, named Dhunwa. No sooner did he see my son, than he exclaimed, 'There is indeed a spell of witchcraft on your son.' Then asking for a piece of blue cloth, some tares and pease, he performed incantations over my son. On this Gunputee went away, saying, 'As you have called in Dhunwa, I will go home.' Dhunwa's applications aggravated my son's disorders. Dhunwa then said, 'Send for Gunputee; your son cannot recover, except by means of his remedies.' Accordingly, I sent again to call Gunputee; but Gunputee would not come again. I sent a message to him, that I would make him a present of a buffalo. Gunputee then came, and performed some incantations, and my son recovered a little, indeed was getting well. Gunputee's mother, however, intervened, and begged Gunputee to go home. No sooner had Gunputee gone, than my son became just as sick as before. I then sent for the prosecutor Nuthoo. He came, and administered to him, and began exclaiming, 'A cat is scratching me.' He made me give another fowl, and sacrificed it: again my son became a little better; but when the offering had been deposited in the jungle, my son's malady increased. I was then obliged to give a black goat. The prosecutor Nuthoo returned home, and that night my son died. My grief and lamentations were excessive. I sent for Nuthoo, but he would not come. At length Dhunee Gosain went and brought Nuthoo to me. Gunputee came along with him. I bound my son in his winding sheet, and said to Gunputee, 'You have killed my son, take and carry him to Huwalbaug (the Commissioner's residence). Accordingly I put my son's corpse on Gunputee's back*, and we proceeded towards Huwalbaug. We had gone some way, when I was persuaded by Johdhun Singh and Kharshellee to bury my son, and go alone to Huwalbaug. I presented two petitions to the Commissioner, accusing Gunputee of having killed my sons, but obtained no answer. I then returned home, and having left my village, went with the remainder of my family to reside in Mouza Timlee, 20 coss distant. Soon after the Zumeendars of Timlee, at the suggestion of Nuthoo and Gunputee, expelled me from their village, and I returned to my former habitation. Then my wife and a third son also died. Overcome with grief at the death of my wife and three sons, in the following month of Jeth (May), I killed Gunputee at Sukteea Bhogtee's house with this sword, and then fled to Mouza Bothoot, and surrendered myself to Kumloo Purdhan; saying, that I had killed Gunputee;

* Nuthoo (Gunputee's father) acknowledges such to have been the case. The corpse of a *Dome* on the back of a Brahmin!

and as Gunputee's body had been sent to the Magistrate's office, to send me along with it. Kumloo Purdhan took me to Khoosal Kumeer, and Khoosal sent me along with two of his men to the Kumeer of Palee, who forwarded me to the Magistrate."

The truth of the circumstances confessed by the prisoner is without any very material variations confirmed by the evidence of the prosecutor Nuthoo, (father of Gunputee,) and by the evidence of Mooseen Bhogtee, brother of Sukteea Bhogtee, at whose house Gunputee was murdered. It appears that Gunputee had gone to Mouza Haut, the place of the prisoner's residence, to administer charms or incantations to Sukteea Bhogtee, and that the prisoner came unawares at night, and without any words passing, cut him down. The prisoner does not appear conscious of having acted criminally, in his conscience: the duty of retaliation for the death of his sons appears to outweigh all other considerations, and to justify in his mind the murder of Gunputee. For upwards of two years, the prisoner has been suffering the agony of suspense between life and death. The Commissioner added: These considerations cannot, however, I presume, be considered sufficient to justify any alleviation of his punishment. Under the former Hindoo governments, had a *Dome* ventured to inflict even a severe blow on a Brahmin, he would, I am given to understand, have been punished with death; for the crime of murdering a Brahmin, even though perpetrated under the impression of witchcraft, lingering torture would probably have been superadded to the punishment of death: not that the practice of a barbarous people under a barbarous criminal code, should have any weight in guiding our decisions. I merely mention the fact, to illustrate the feeling that must be supposed to preponderate in the minds of the superstitious priest-driven people of Kumaoon, on the occurrence of a crime such as it has now been my task to report upon. In submitting the propriety of extending capital punishment to the prisoner Keshwa, it is, I must confess, with a degree of hesitation, and under the impression of a deep feeling of regret, such as in the other two cases, already submitted by me to the Nizamut Adawlut, I have in no measure been conscious of.

The Court of Nizamut Adawlut, (present W. Leycester and S. T. Goad,) having had before them the proceedings held by the Commissioner at Kumaoon, were of opinion, that the prisoner was duly convicted of the offence charged, and that he was liable, under Regulation X. of 1817, to a sentence of death. Taking into consideration, however, all the circumstances of the case, and the uncivilized character of the inhabitants of that part of the country where the crime was committed, they judged it proper to mitigate the punishment to which the prisoner was liable, and sentenced him to imprisonment for life in the jail at Huwalbaug.

1822.
Sept. 4th.
LUCHMUN RAJPOOT'S case.

MUNEERAM,
against
LUCHMUN RAJPOOT.

Charge—MURDER.

Case of a prisoner who murdered his concubine in a fit of passion, and afterwards took her ornaments: sentenced to imprisonment for life; though the conviction was not for murder in prosecution of robbery.

THIS trial was held by the Commissioner on deputation at Almorah, on the 1st June 1822, under instructions from the officiating Judicial Secretary, dated the 13th of May, and in conformity to Regulation X. 1817. The statement of the case was thus submitted by the Commissioner, who presided at the trial. "The deceased Mussummaut Jussoundee appears to have been in keeping amongst the Goorkha soldiers, previous to their expulsion; and on our conquest of the country, to have been transferred to the Kumaoon Provincial Battalion. Prostitution is (I may here observe) regarded in Kumaoon as a profession less disreputable than in the plains, or in most other parts of the world. This difference of estimation may in some measure be accounted for by the circumstance of public provision having been made, in the time of the rightful Rajas of this country, and subsequently during the government of the Goorkhas, for the subsistence of a band of courtesans, devoted solely to the use of the soldiers stationed at the head quarters of Almorah or Kumaoon. Five or six rent-free villages appear to have been allotted for their support. The deceased Mussummaut Jussoundee, lived after our conquest of Kumaoon, in the keeping of several sepoys in the Provincial Battalion successively, and about a year ago, was transferred to the protection of the sepoy Poorun, one of the witnesses. Previous to her going to Poorun, the prisoner appears, from his own statement, to have become acquainted with the deceased: and disputes, owing probably to the deceased's inconstancy, were of frequent occurrence between the deceased and Poorun, the keeper, or to use the more reputable denomination attached to such a connection in Kumaoon, the husband of the deceased. About three months and a half previous to the murder, Poorun obtained leave of absence to go to his home, and the woman's unwillingness to accompany him appears to have occasioned some dispute. She did, however, accompany him; and they only returned to cantonments a few days previous to the date of the crime. Poorun was sent on duty from the provincial cantonment of Hawalbaug to Almorah, five miles distant, on the 3d of June. The crime charged to the prisoner was committed on the 9th of June. For the first five days of Poorun's being on guard at Almorah, his food was brought to him by his brother; but the latter having been sent away on duty, the deceased was in the act of carrying to him his daily allowance for the 6th day, when she was murdered in the way. The circumstances I have above stated, showing the mode of life and connexions of the deceased, are proved equally by the evidence of the witnesses and the confession of the prisoner. In proceeding to state the circumstances immediately attending the murder, I shall be guided entirely by the confes-

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LUCHMUN RAJPOOT'S case.

sion of the prisoner as made before me. The prisoner states, that he was off duty in the regimental hospital for medical aid. The deceased had been for some days endeavouring to persuade him to run off with her to the plains, but he would not consent. She had spent a good deal of his money, and notwithstanding had kept company with other sepoys. This circumstance had incensed the prisoner, and disputes had occurred between them previous to the fatal day. On the morning of that day, the 9th of June, at half past 3 A. M. the deceased came to the hospital, and saying, that she was only going as far as Almorah, induced the prisoner to accompany her to the distance of about a furlong from the provincial lines, and here the prisoner declined going any further. The deceased threatened, if he would not accompany her, to inform against him to his officers for having left the hospital, and an altercation ensued. The threat of the deceased to bring the prisoner into trouble, inflamed the latter's previous anger and jealousy into a violent passion. He drew his sword; (before the Magistrate, he stated it was his purpose to cut off her nose;) a scuffle ensued: the deceased clung to him, and bit him in the belly; and the prisoner, under the impulse of violent rage, struck her on the neck twice with his sword, so as almost to sever her head from her body, and taking away her jewels, viz. her silver *hunslee* (neck ring,) *boolaq* (golden nose ornament), and silver ear-rings *(joobjhoobee)*, left the bleeding corpse, and returned to the hospital. The prisoner acknowledges that the jewels belonged to the deceased, the nose ornament being a present from her mother; the other jewels were (he says) made up partly out of her own, and partly from money given to her by him. Such are the facts proved by the voluntary confession of the prisoner before me. He narrated the particulars of the murder and robbery committed by him with the utmost *sangfroid* and indifference, manifesting an almost entire want of feeling, both regarding the blood he had shed, and the punishment awaiting him. The confession of the prisoner is in my opinion quite sufficient for his conviction of the murder and robbery; even had he not confessed either before the Magistrate or before me, the circumstantial evidence against him, consisting in his sword being found bloody, and concealed in the *chupper* of his house, and the jewels of the murdered woman being found in his house among his apparel, as proved by the witnesses, would, when taken in connexion with his previous habits of intercourse with her, have warranted, in my judgment, his conviction. The crime of murder and robbery being clearly proved against the prisoner, and there not appearing to be any circumstance that can be urged in palliation of his guilt, I have no hesitation in stating my opinion, that the prisoner should suffer death; that he should be hung until dead at the usual place of execution, and afterwards suspended in chains as near to the spot where the murder was committed, as to (the Magistrate,) the Commissioner of Kumaoon, may appear convenient and advisable.

By the Court of Nizamut Adawlut. W. Leycester, (chief Judge.)

"With reference to the provocation given by the deceased, and to the act

1822.
LUCHMUN RAJPOOT'S case.

having been committed in a sudden fit of passion, I think 10 years imprisonment with hard labour will be adequate punishment." S. T. Goad, (third Judge.) "I do not concur with the chief Judge in the measure of punishment for the offence established against the prisoner. Although the prisoner alleges provocation on the part of the deceased, and that he killed her with two sword wounds in the heat of passion; yet the robbing her of her ornaments, and the concealment of the offence which he had committed, warrant, I think, a presumption against the prisoner, that robbery, and not anger, was the motive for the murder. In England, I think, the prisoner would be sentenced to suffer death; and I think him deserving of capital punishment, but at all events of imprisonment for life." W. Dorin (officiating Judge). "There appears sufficient proof against the prisoner, from his own confession, and from circumstances, that he killed the deceased Musummaut Jussoda, with whom he seems to have had an illicit connexion. It appears to me probable, that the immediate cause of his killing her was passion, and not intended robbery; but after having killed her, he seems to have taken the opportunity of appropriating some of her ornaments, afterwards found at his house. Admitting it to have been homicide committed on account of provocation, on a helpless woman, it was the effect of brutal passion, and with no sufficient circumstance to extenuate it from murder."

The prisoner was ultimately sentenced to imprisonment with hard labour for life in the jail of Huwalbaug.

1822.
Sept. 12th.
MOOHUMMUD EWUZ'S case.

GOVERNMENT, *against* MOOHUMMUD EWUZ.

Charge—PERJURY.

False evidence taken before the *Serishtadar* of a civil Court on oath administered by such officer, is punishable as the crime of perjury, supposing it material to the issue.

MOOHUMMUD EWUZ was charged with the crime of perjury, and tried for that offence at the 2d sessions of 1822, for zillah Mymensingh. The facts of the case itself were few and simple. The prisoner having, on the 10th of April 1817, in a civil suit, pending the decision of the Dewanny Court of zillah Mymensingh, denied on oath, whether administered by the Judge of the time or by the native officer did not appear, (though there was reason to suppose by one of the latter description,) that he had disposed of by private sale an eight anna share of *Tuppeh Khoorkhye*, his ancestral property, to one Ramkishub Neugee, contradicted that testimony when examined on oath by the *Serishtadar* of the Court on the 11th of January 1822, in a suit subsequently instituted for the same property by Kishen Ram and others, by a free admission of his disposal of it to the said Ramkishub, the truth of which was substantiated by the production of the deeds of lease and release. That he had been guilty of giving false testimony admitted not of a doubt, in the mind of the Judge of Circuit; but

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MOOHUMMUD EWUZ'S case,

that the administration of the oath by the *Serishtadar* was sufficient to constitute the crime of perjury in this or in any other suit, on the part of a witness who might depose untruly, was, he thought, uncertain: his reasons for thinking so were as follow. No Regulation delegated the authority to such an officer: what he considered to be conclusive on the point was, as well the omission of the express mention of that power to native officers, who are declared competent to take evidence, as the precaution the Regulations exhibited in granting it to Collectors, except in particular cases therein specified. If, therefore, the power was withheld from such high public authorities, though they were of a description that would admit of their possessing a general freedom of the kind, and to Registers of the Courts likewise, who were restricted in the procedure, in some instances, unless by special sanction, he did not imagine that it could be delegated in the above particular to the native officers, by whom it might be abused, when recourse could so easily and readily be had to the Judge to administer it.

The *futwa* of the law officer of the Court of Circuit pronounced the full establishment of the prisoner's guilt, which thereby subjected him to punishment at the discretion of the Court; in which the Judge concurred, and accordingly awarded a proportionate sentence; but postponed the issue of the warrant until he should receive the opinion of the Superior Court, on the construction of those parts of the Regulations which relate to the power, of which he was doubtful, of the native *Omla* of the Courts of Dewanny Adawlut to administer oaths to witnesses giving testimony before them in civil suits.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of perjury, and declared him liable to discretionary punishment by *Tazeer*. By the Court. W. Leycester, (chief Judge.) "I do not see how we are to proceed with this case, except by annulling the trial, and ordering it to take place *de novo*. We are left in absolute ignorance what the point at issue was between the plaintiff and defendant; and unless the charge is as "relative to some judicial proceeding, and upon a point material to the issue thereof," we have nothing to do with it. With regard to the doubt of the Court of Circuit; if an officer is to take the deposition of a witness, I conclude the officer has the power to swear him. The first clause and 13th section of Regulation XVII. of 1817, authorizes commitments for perjuries before the civil courts on any inquiry; and section 14 Regulation XVII. of 1817, authorizes the same when the perjury is before their officers. The law is quite nugatory, unless it also give the power of adopting the measure necessary to take the deposition of a witness, viz. administering the oath, or unless it had also added before whom the oath should be taken." By the third Judge, (S. T. Goad.) "It is clear, I think, that perjury has been committed, and that the prisoner's denial in 1817, of sale to Ramkissub Neugee, must have been material to the issue of the suit in which the evidence was taken. It would, therefore, in my opinion, be sufficient to call for the proceedings held before the Register in 1817, from which we can determine whether the denial was material or not, without annulling the present trial."

1822. MOOHUMMUD EWUZ'S case.

The chief Judge subsequently coinciding in this opinion, the papers of the case alluded to were called for; and it appearing that the testimony proved to be false was material to the issue of the suit, the Court fully concurred in the conviction, and confirmed the sentence of three years imprisonment passed upon Moohummud Ewuz by the Judge of Circuit.

1822. Sept. 17th. MAHOMMED ALEE'S case.

GOVERNMENT, *against* MAHOMMED ALEE.

Charge—PERJURY.

The prisoner personated another, and swore falsely that he was present at an affray. It appearing that his sole motive was to oblige the individual whom he personated, he was sentenced to three months imprisonment.

THE prisoner Mahommed Alee, son of Danish Mahommed, was tried at the 2d sessions of 1822, for zilla Tipperah, on the charge of perjury, by personating and declaring himself, on oath, to be one Ruhmeezoolah *alias* Mahommed Alee, son of Panollah, a *Chuprassee* on the establishment of the Resident of Luckeepore, who had prevailed on him to convey an official proceeding holden by that officer to the Magistrate of the Tipperah jurisdiction, which he, the *Chuprassee*, had been directed to deliver; and by deposing, at the same time, to his having witnessed an affray that was stated to have occurred there, when in fact he was not present at it, and was not only unacquainted with the circumstances attending it, of his own knowledge, but also by whom committed. His confession to the Magistrate precluded the necessity of the adducement of proof to substantiate his guilt; and a similar confession before the Court of Circuit affording no ground for questioning the truth of them, the law officer, in his *futwa*, declared him liable to discretionary punishment. Discerning, however, (the Judge of Circuit observed,) in his conduct, although it was morally wrong, no marked instance of depravity that demanded the visitation of a sentence so severe as imprisonment for the period of three years, less than which, by clause 3, section 9, Regulation XVII. 1817, he was not empowered to apportion, and the Magistrate possessing no authority for awarding punishment in cases of perjury, to whom otherwise he should have returned the trial for judgment, he was induced to refer it for the consideration of the superior Court. It was, he thought, obvious, that the prisoner acted under no motive but that of obliging the *Chuprassee* whom he personated; and notwithstanding he consented, when he undertook the duty, to utter a falsehood, and afterwards deliberately perjured himself, yet as that act was calculated to operate to his prejudice alone, he stated that he saw reason to regard him as a fit object for a partial mitigation of the penalty.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of perjury, and declared him liable to discretionary punishment by *Acoobut*. The Court (present W. Leycester) fully concurred in the conviction; and taking into considera-

tion the grounds on which the Circuit Judge had recommended mitigation in his favour, sentenced him to three months imprisonment. The Court observed, that it did not appear from the proceedings of the Magistrate, whether the prisoner was confined in jail or admitted to security, from the time of his commitment up to his trial, and directed that the Court of Circuit would point out this omission to the Magistrate.

1822. MAHOMMED ALEE'S case.

JEETUN,
against
KHEKHUR.

1822. Oct. 2d. KHEKHUR'S case.

Charge—KIDNAPPING, WITH ROBBERY, AND ATTEMPT TO MURDER.

A prisoner being charged with enticing away a boy, and robbing and attempting to strangle him; held that the robbery and attempt to strangle having occurred in Tirhoot, the trial should take place in that district, tand not in the district of Behar, out of which the boy was enticed.

THE prisoner was charged with enticing away the prosecutor's son, a boy eight years of age, attempting to strangle him, and robbing him of his ornaments; and tried for those offences at the 1st sessions of 1822, for zillah Behar.

It appeared in evidence, that in Fagoon 1227, Fussily, corresponding with the beginning of March 1820, the prosecutor sent his son, a boy about eight years of age, with a piece of gold to a neighbour, named Surrubjeet. As he did not return, he went to Surrubjeet's house to enquire about him, where he heard that the boy had brought the gold, which had been returned by him, as there was not enough of it; but no further information was obtained respecting him till the third day, when a note was brought to the prosecutor by a Pasban named Oodram, who told him the boy had been robbed, but was safe in a village on the Tirhoot side of the river, to which place the prosecutor immediately proceeded, and found his son. The account the boy gave of himself was, that on his return from Surrubjeet's, he met the prisoner Khekhur, a carpenter by profession, who enticed him to accompany him, first, to a neighbouring village, and then across the Ganges, promising to shew him something that would amuse him; that when they got to the other side of the river, the prisoner told him, that for fear of thieves he must take off his *kurrahs*; and as they were difficult to open, he cut them with a chissel which he had in his hand. He then, the boy stated, desired him to lie down, and when he objected, threatened him, and bound him with *arher* twigs, with which he attempted to strangle him, and robbed him of a purse containing the piece of gold he had brought back from Surrubjeet's, a rupee, and some pice, with which he went off. The boy further mentioned, that as soon as the prisoner left him, he extricated himself, and went to another field, where he remained till the next morning, when he proceeded to the nearest village, where he told his story, and shewed the marks of the *arher* twigs on his neck.

1822.
KHEKHUR'S case.

The law officer of the Court of Circuit acquitted the prisoner Khekhur for want of proof; and there being no direct evidence against him, except the testimony of the boy, whose statement, however, was so clear, and agreed so exactly with the story he at first told, although the occurrence happened more than two years before, that in the Judge of Circuit's opinion, there could be no doubt as to the truth of it; added to which was the fact of the prisoner's having at that time absconded from his home without any reason, as appeared from the deposition of his mother taken before the Thanadar, and his not having again returned to his village.

By the Court of Nizamut Adawlut. J. Shakespear, (fourth Judge.) "I am of opinion, that the evidence is sufficiently strong to justify a sentence of imprisonment, under the *futwa* of our law officers, for robbery, and I think 10 years imprisonment would be proper.

W. Dorin, (officiating Judge.) "I am of opinion there is sufficient evidence to convict the prisoner of having robbed the prosecutor's son of his ornaments and other things, under circumstances of great bodily violence. The evidence of the boy, corroborated as it is by other circumstances, and by the defendant's absconding, is, with me, decisive. But I think the whole proceedings on the trial are void; for the act was committed in Tirhoot, and not in Behar: the defendant was not even in Behar when the Magistrate's warrant issued. He was at last taken in Tirhoot, and there I think he must be tried, and no where else, to make the trial legal. I would therefore have the Magistrate's proceedings made over to Tirhoot, and a retrial had, and the evidence of the prisoner's mother Titroo taken on the trial. The point of form is perhaps immaterial to the justice of the case; but I think we have no discretion. The Magistrate and Judge of Circuit should have been more cautious. The Magistrate does make some allusion to the point in his *foobukary* of commitment."

Courtney Smith, (second Judge.) "As the enticing must have taken place on the Behar side of the Ganges, on which side both the prosecutor and the prisoner reside, the question of jurisdiction is perhaps of no great importance; but as I think the evidence of the mother would considerably strengthen the case, (though perhaps, when she finds it would bear against her son, she may depart from her former story,) I have no objection to order a retrial, upon the ground that the *arher* field in which the boy states himself to have been bound and robbed is in the district of Tirhoot, and that all crimes must be tried in the jurisdiction within which they are perpetrated." The following order was accordingly issued, (present C. Smith and W. Dorin.)

The Court observe, from the proceedings on the trial of Khekhur, and from those of the Magistrate of zillah Behar on the commitment, that the main offence charged against the prisoner, namely, having robbed the son of the prosecutor, with an attempt to murder him, took place (supposing the charge true) in zillah Tirhoot, and consequently that the prisoner could not legally be tried for it at the Behar sessions. The Court accordingly annul the proceedings on the trial held at zillah Behar, and direct that the prisoner be retried at the

ensuing sessions for the zillah in which the offence is charged to have taken place. On the retrial, besides the witnesses before examined, the evidence of Musst. Titoo, mother of the prisoner, will be taken; as she appears to have been examined before the Thanadar, and to have there stated circumstances regarding the prisoner and the son of the prosecutor being seen together on the night after he was missing from home. Search will be also made for any other witnesses who may have seen the prisoner and the prosecutor's son together, and may be able to speak to the fact of the prisoner having left Bykontpore, or crossed the river in company with him at the period of the alleged robbery.

1822.
KHEKHUR'S case.

MUSST. BUNNOO, *against* MUNGUR.

1822.
Oct. 3d.
MUNGUR'S case.

Charge—WOUNDING.

THE prisoner was tried at the Patna city sessions, for July 1822, being charged with wounding the prosecutrix Musst. Bunnoo, his wife, with intent to murder her. The fact was proved partly by the confession of the prisoner when first apprehended, and partly by the evidence of Juggoo and Munnoo, two neighbours, (who were attracted to the house early in the morning by the screams of the wounded woman,) as well as by the testimony of Peer Buksh, her husband's brother-in-law. When the door was forced open, the husband was discovered sitting upon her, with a *rampee* in his hand, and she was ascertained to be wounded. There were four wounds, two in the neck, one in the belly, and one in the arm. The prosecutrix stated, that there was no immediate cause for the assault, but that her husband had frequently quarrelled with her before, and had threatened to expel her from his house.

Prisoner convicted of wounding his wife with intent to murder. Sentenced to 14 years imprisonment, though little injury resulted to the woman from the wounds.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of the crime with which he was charged, and declared him liable to discretionary punishment. The Judge of Circuit concurred in the conviction; and considering the case a fit subject of reference to the superior Court, he referred it accordingly; but at the same time observed, that the prosecutrix had not sustained any material injury from the wounds inflicted.

The law officers of the Nizamut Adawlut declared the prisoner convicted of the charge on violent presumption, and liable to discretionary punishment by *Acoobut*. By the Court. W. Dorin, (officiating Judge). "I think there is sufficient proof that the prisoner wounded his wife; he apparently did it deliberately, from being incensed at her on some account or other, which does not clearly appear. The instrument used is termed a *rampee*. It is, I understand, used by *Mochees*, and the prisoner, as a *Bhistee*, might have had one for

1822.
MUNGUR'S case.

occasional use. It must have been dangerous. It is not easy in these cases to apportion punishment. The woman does not, as it happened, appear to have been much injured. He must have intended violent, if not fatal injury. I would sentence to about five years imprisonment." S. T. Goad, (3d Judge.) "I do not think five years imprisonment adequate punishment for the prisoner, who evidently intended to murder his wife, by cutting her throat, and stabbing her in the belly. I would sentence him to 14 years imprisonment with hard labour." The chief Judge concurring in this opinion, a sentence of 14 years imprisonment was awarded accordingly.

1822.
Oct. 3d.
RAMJEE RAI'S case.

GOVERNMENT, *against* RAMJEE RAI.

Charge—PERJURY.

The prisoner having admitted before the Moulovee, that he had perjured himself in the Court of the Register, was sent by the Moulovee to the Magistrate, and therefore committed by the latter officer to stand his trial for perjury. Held that this proceeding was irregular, and that the commitment should have been made at the instance of the Court in which the perjury was committed.

THE prisoner Ramjee Rai was charged with swearing falsely, and tried for that offence at the 1st sessions of 1822, for zillah Burdwan. The case was in substance as follows. One Budunchund Chowdree, a Talookdar, preferred, by his Mokhtar, a charge in the Foujdaree Court against the prisoner, his discharged Gomashta, for having given false receipts to his Ryots for revenue due from them, with the view of defrauding him. The Magistrate referred the case to the zillah Moulovee for investigation. On his trial before the Moulovee, the prisoner denied the charge laid against him, but acknowledged that he had given to one Ramjie Rukhit (a ryot) a receipt for 55 rupees, although the said ryot had only paid 11 rupees of that sum, and that he had made his master acquainted with the circumstance. He at the same time admitted, that the evidence he had given in the Register's Court, in the summary revenue suit of Budunchund Chowdree *v.* Ramjie Rukhit, to wit, that the whole of the 55 rupees had been paid by the defendant, for which a receipt had been given, was false. On this the zillah Moulovee sent the prisoner back to the Magistrate, who committed him to stand his trial before the Court of Circuit for having sworn falsely in the Register's Court.

The *futwa* of the law officers of the Court of Circuit convicted the prisoner of perjury, and declared him liable to discretionary punishment by *Tazeer*. The acknowledgment made by the prisoner before the zillah Moulovee was fully proved by the subscribing witnesses to it; and the Circuit Judge concurred, therefore, in the conviction of the prisoner; but doubted the regularity of his commitment, and his liability to punishment, for the following reasons. From his own admission, it was evident that the prisoner perjured himself in the Register's Court; and had the Register detected the perjury, and sent him to the Judge for the purpose of being committed, the prisoner would have been amenable to punishment. A landholder

sued his tenant for rent. The Gomashta, who had been the servant of the landholder, swore that the rent had been fairly paid up, and that he (the witness) had given the tenant the receipt produced for the payment of it. Further, it is so uncommon for the servants of the landholder to side with the tenants, that it was hardly to be expected that the evidence in the present case was liable to suspicion. The Register, therefore, had nothing left to do but to dismiss the suit: but as the prisoner escaped detection at the time, he could not, in the Judge of Circuit's view of the Regulations, be brought to trial for that offence at any subsequent period. The Magistrate, he observed, appeared to have made the commitment, because no specific charge of perjury was made by the complainant, and because the acknowledgment of the prisoner was gratuitous. The charge, he added, that was made must, if established, have convicted the prisoner of having given perjured evidence in a civil suit, as it was not preferred until the prisoner had given his evidence in various suits instituted by the complainant against his ryots, which evidence occasioned their dismissal. But that it mattered not what the charge might have been, as the cognizance of the crime of perjury is restricted to the officer in whose Court or before whom it may be committed. By the Court of Nizamut Adawlut. W. Dorin, (officiating Judge.) "There are two points to consider, 1st, Whether the commitment for perjury was legal in point of form; 2d, Whether the deposition on oath made by Ramjee Rai in the summary suit before the Register (that he gave a receipt to the ryot for 55 rupees *paid in*) was a false deposition, or not. As to the first point, I deem the commitment irregular and void, as having been made by the Magistrate without competent power. According to the rules of Regulation XVII. 1817, the imputed perjury should have been referred to the Judge by the Register who tried the case, with his (the Register's) opinion as to the matter; which was not done. But I think the Register is not restricted to the particular time at which he hears the suit, and that he may afterwards take up the point. Therefore, though we must annul these proceedings as invalid, I think the papers may still be laid before the Register who tried the summary suit, and the charge be brought on by him in due course, if he thinks fit. But *we* cannot order it, as the civil suit is not before us on the civil side of the Court. Then, as to whether the imputed perjury was committed. If it was, it was out of resentment to the Zemindar, for turning the prisoner off from service as a Gomashta. But all the evidence which appears of the perjury, is an examination of the prisoner before the Moulovee, without oath, in which he apparently admits that he falsely swore when on oath. But this admission, he urges in the trial, was not rightly taken down, and was not correct. I would not convict of perjury, unless it could be shown whether the 55 rupees were in reality paid or not, by the ryot. And in the event of the case being still followed up, evidence should be looked for to clear up that point. The ryot, as a witness for the defence, says he paid it all. But he is so directly interested, that we cannot trust him. Of three witneses in the Foujdaree, one *(Sisteedhur)* says,

1822.
RAMJEE RAI'S case.

the prisoner told him he gave the receipt without all the money having been paid. The two others are merely hearsay. It may be of consequence that the alleged perjury should be followed up; for if committed to injure the Zemindar, it was a gross one. The Circuit Judge has tried the case badly. He has not even placed on the record the deposition (or rather *roobukaree*) containing the alleged perjury, and has been content with the bare statement without oath, against the statement on oath, without investigating further." The 3d Judge, (S. T. Goad) concurring in this view of the case, the following order was issued. "The prisoner is convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of the crime of perjury, and declared liable to discretionary punishment by *Tazeer*. The Court, however, considering the commitment to have been irregular, in not being made in conformity with the rules laid down in Regulation XVII. of 1817, annul the proceedings of the Court of Circuit on the trial of the prisoner, and direct that he be released upon bail, to answer the charge of perjury, if it shall again be preferred against him, in consequence of any report which the Register may make of the case to the Judge, in conformity with the provisions laid down in clause 2, section 14, Regulation XVII. of 1817."

1822.
Oct. 9th.
Case of NUWAZEE and KURREEMBUKSH.
Altering a common receipt for rent, so as to make it appear like a receipt for money due under a decree of Court, and uttering the same, punished by seven years imprisonment.

GOVERNMENT,
against
NUWAZEE and KURREEMBUKSH.
Charge—FORGERY.

NUWAZEE Mundul, and Kurreembuksh, were charged with forgery, and tried for that offence at the Moorshedabad city sessions, for July 1822.

The law officer of the Court of Circuit declared in his *futwa*, that the prisoners were convicted on violent presumption of forgery, and fraudulently issuing a fabricated paper knowing it to be such; and the Judge of Circuit expressed his opinion, that the evidence adduced only established the crime of fraudulently issuing a paper knowing it to be fabricated, and therefore referred the case for the decision of the superior Court.

The prisoners were convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of forgery, and uttering a forged receipt, and declared liable to discretionary punishment by *Tazeer*. By the Court. W. Dorin, (officiating Judge.) "I think the defendants both guilty. The document forged is a receipt for 199 rupees, 11 annas, purporting to bear date the 28th Phagoon, 1226, and to be for money paid by the defendants, in satisfaction of a summary decree for arrears of rent of 1225, whereas in fact it was a common receipt for rent of 1226, and has been altered in sundry places. In this fraudulent alteration to cheat the Zemindar, the forgery consists. It should be observed, that on the security of Nuwazee, Kurreem took an *ijareh* for

1822.

Case of NUWAZEE and KURREEM-BUKSH.

three years (in 1224,) of Turuf Patkonla, &c. from Ashruf Ali Khan, the Zemindar. They were sued by his agent for arrears of 1225; and he obtained a summary decree against them for 445 rupees, and costs*. Some of this they seem to have paid, according to an engagement they executed to discharge it by *kists*; but, part remaining unpaid, the agent applied to have the summary decree enforced, on which three receipts were on their part put into Court, one for 100 rupees 8 annas, one for 49 rupees 11 annas, and one for 199 rupees 11 annas, (the forgery,) besides other money which seems to have been paid in, as per a receipt of the *Khizanchee* among the Foujdarry papers. Who actually put in this forged receipt, has not (as it should have been) been put in evidence. Nuwazee, however, admits that he put it in, adding, that he cannot read; that, if altered, it must have been done by the Zemindar's *Omla*, and altered before he got it. The other says he was in the Moofussil, and never saw it. From the evidence and circumstances, there is sufficient to presume that it was forged by Kurreem, (who admits he can write,) with the aid and suggestions of Nuwazee, and put into Court by Nuwazee to serve their joint purpose, by their joint contrivance, even though only one should have been present at the filing. I would sentence the second prisoner for the forgery, and the first for the uttering it, and each to seven years imprisonment." The 3d Judge (S. T. Goad) concurring generally in this opinion, a sentence of seven years imprisonment was passed upon the prisoners accordingly.

ZEEBUN, *against* SHEIKH MOCHEE.

1822.

Oct. 22d. SHEIKH MOCHEE's case.

Charge—MURDER.

THE prisoner Sheikh Mochee was charged with inflicting several wounds on the body of his wife Musst. Zeebun, with a *kutan*, endangering her life, and with an intent to kill her. The trial came on at the first sessions of 1822, for zillah Burdwan.

Prisoner convicted of dangerously wounding his wife with a *kutan*, by his own account from motives of jealousy, sentenced to 14 years imprisonment with

The *futwa* of the law officer of the Court of Circuit convicted the prisoner on violent presumption of severely wounding his wife, with the intent to kill her, and declared him liable to discretionary punishment by *Tazeer*. The Judge of Circuit concurred entirely with the law officer, as the evidence in this case left no doubt that the intention of the prisoner was to destroy the life of his wife. The wounding was fully proved, not only by the evidence of witnesses, but by the admission of the prisoner himself. His defence was, that his wife had been unfaithful, and that he saw her in the very act of criminal

* For 1226, all demands were apparently satisfied by the farmers.

1822.

SHEIKH MOCHEE'S case.

hard labour in banishment.

intercourse with her first cousin, Sheikh Nusrut, who was a witness in this case. No evidence whatever was produced to corroborate this assertion; but on the contrary, every witness examined on the trial spoke in the highest terms of the conduct of the prosecutrix, and they all declared that they never heard her chastity even doubted. The deposition of the wife was to the following effect. That her husband visited her during the absence of her father; that he awoke early in the morning, and desired her to quit her father's house, and accompany him; that she opposed the circumstance of her father's absence to her complying with his request; and that, on his being very urgent for her accompanying him, she requested him to procure bearers to carry her away; that on this he made use of abusive language, which she returned, on which he wounded her.

In referring the case, the Judge of Circuit accompanied it by the following observations. "That the prisoner visited her with some mischievous intent, is evident from his bringing a *kutan* with him, which he was obliged to borrow from a friend, and which he secreted from the family. There is no doubt that the prisoner was desirous of taking his wife from her father's protection, and that the opposition made to this measure by her family, in consequence of the prisoner's utterly destitute situation, was a source of inquietude to him. This may have given rise to jealous feelings on his part, or have induced him to have pretended jealousy, as it is in proof, that he mentioned to some of the witnesses that his wife was too intimate with her cousin. These suspicions, had there been any cause for them, could not have justified him in coming armed, and in avenging himself in the manner he has done. I therefore submit the trial to the superior Court, to award the punishment due to the prisoner for a deliberate intention to destroy the life of a fellow creature. Supposing the prisoner not to have feigned jealousy, I should consider a sentence of fourteen years imprisonment in banishment as the smallest punishment his crime would call for."

The prisoner Sheikh Mochee was convicted by the *futwa* of one of the law officers of the Nizamut Adawlut on strong presumption of severely wounding his wife, with the intent to kill her, and declared liable to discretionary punishment. The Court, (present S. T. Goad,) concurring in the *futwa*, sentenced the prisoner to fourteen years imprisonment in banishment with hard labour, from the 16th October 1822.

1822.
Nov. 21st.
MUSST. LUDROUN'S case.

RAMDIAL BUKKAL,
against
MUSST. LUDROUN.

Charge—MURDER.

The trial of this prisoner came on at the Patna city sessions for March 1822. The facts of the husband of the prisoner being in perfect health when he was called by her to eat the meal which she had prepared for him, of his complaining of violent burning at the stomach, and expressing his suspicion that he had been poisoned immediately after his eating it, and of his expiring with the usual symptoms of death by poison, were, the Judge of Circuit observed, clearly substantiated by the evidence; and the circumstances of the conduct of the prisoner, both previous and subsequent to the death of her husband, together with the opinion of the surgeon who opened the body, tending strongly to corroborate the facts proved in evidence, he had no hesitation in expressing his conviction, that the prisoner had been guilty of deliberately causing the death of her husband by administering poison. The *futwa* of the law officer of the Court of Circuit being also to the above effect, he considered it his duty to recommend that the prisoner should be sentenced to suffer death. And he trusted, that, should the superior Court sustain the conviction, a sentence to that effect would be passed; as an example of the kind appeared requisite to check the prevalence of that detestable offence, which appeared but too frequent in the city of Patna. He added, that sufficient precautions did not appear to be used in large cities to prevent the sale of poisonous substances. Those commonly used in the perpetration of this crime in that part of the country, he observed, were a root named *Dukra*, of which several species are brought from the Nipal mountains, and preparations of arsenic; and that, were measures taken to prevent the importation and sale of the former, and to restrict the sale of the latter to a few shops held by responsible persons in each city, one great step would be taken to check the prevalence of the evil.

The circular order of the Court dated the 3d of August 1814, directing that the examination of the civil Surgeon relative to the real or assumed insanity of a prisoner should be taken on oath, is equally applicable to their depositions as to violent or unnatural deaths.

By the *futwa* of the law officers of the Nizamut Adawlut the evidence was declared insufficient, and the prisoner entitled to her release.

By the Court, (present W. Leycester and J. Shakespear). "Prior to passing sentence in this case, the Court are desirous of obtaining further evidence on the points noticed below. Though the Court's orders of the 3d of August 1814, (No. 42, of printed circular orders,) apply literally to the examination of Civil Surgeons on oath in cases of real or assumed mental derangement, the spirit thereof, and the very nature of a criminal trial, would require that the safety of a person under trial should not be liable to be affected by any statement not sanctioned by oath, whether made by a Civil Surgeon or any other person. The Court also remark, that the want of a translation into Persian, for the information of the law officers, of the statement of Mr. Assistant Surgeon Proctor, is a great defect; and it

1822.
MUSST. LUDROUN'S case.

would seem to have led the law officers into the mistake, that the opinion formed by him was exclusively restricted to his examination and view of the body: whereas the opinion rests upon two grounds, viz. 'the appearances impressing him strongly with the opinion that some of the mineral poisons had been administered,' and 'the account too given of his illness by his father' being 'of corresponding purport.' The Court direct, that the Court of Circuit call upon the Magistrate to put upon his proceedings a translation of the Assistant Surgeon's statement, and that the Assistant Surgeon be examined minutely upon oath before the Circuit Judge holding the ensuing sessions, regarding his examination of the body, and the symptoms apparent thereon, whether those symptoms can be exclusively ascribed to the exhibition of a mineral poison, or if not so exclusively, under what degree of uncertainty they may be assumed to have proceeded from poison, and what may have been the extent of his previous experience in the effect of mineral poison.

"The Court regret that any circumstances should have prevented the earlier examination of the body, and occasioned the delay in subjecting the contents of the stomach to the appropriate tests, until from the offensive nature of the matter, analysis became impracticable: for as the death took place in the city of Patna about midnight, it is supposed that the whole process might have been completed during the following day, if circumstances had not arisen to oppose it.

"The Court further observe, that a shell was brought forward on the trial of the prisoner, said to have been produced by the prosecutrix, mother of the deceased, and declared by her and her husband to have been found the morning after the son's death, in the vicinity of the fireplace or cooking utensil of their kitchen, and that the native *Jurrahs* (Bowannee and Dabeepersaud) are reported by the Darogha to have examined the said shell, and to have declared that it contained the remains of the deadly poison, *sumbul* or *sumulfur* (white arsenic:) but it would not appear how, and by whom, and in whose presence the said shell was found on the said spot; whether the place was the same, or distinct from that to which the deceased was called by the prisoner to eat his dinner, nor whether there is any and what ground to suppose that the shell was placed there by the prisoner. The Court direct, that the above points be examined into with the utmost possible minuteness.

"The Court also observe, that Dabeepersaud, in his examination before the Court of Circuit, does not depose to his own persuasion that the shell contained arsenic; and direct he be examined thereon, as also, if he deemed it to have been arsenic, his reasons for the same.

"The Court further notice, that Bowaneepersaud, the other *Jurrah*, grounds his belief that the shell contained the remains of arsenic, from the colour and smell of the substance in question; but he does not explain his idea of the colour or smell of white arsenic, which he should be called on to do. The said Bowanee further states, in his examination before the Court of Circuit, that as much of

the substance in question remained as when he first saw the shell; and consequently that it was then, and probably continues to be now, as capable of examination as it was at first.

"The Court observe, that the Magistrate ought to have called upon the Civil Surgeon to have analysed this substance as soon as the shell came into his possession, instead of leaving so important a fact to rest upon the uncertain opinion of a native *Jurrah*, so easily capable either of complete confirmation or sufficient refutation; and the Court direct that this measure be now resorted to, and the result will form a part of the Civil Surgeon's examination before the Circuit Judge.

"The Court finally observe, that the Darogha, in his report of the 5th March, states towards the conclusion, that a portion of the matter vomited by the deceased was sent in to the Magistrate, but it would not appear whether this matter was examined or not. The Court of Circuit will call on the Magistrate to give the necessary explanation, and will pursue it up with any inquiry the explanation may suggest. The Court also desire, that the Court of Circuit will direct the Magistrate to endeavour to ascertain and report the nature of, and to send a specimen of the poisonous root mentioned by Mr. Elliott, under the name of *Dukra*, as an importation from Nipal; and should there be any difficulty at Patna, it is supposed that the information may be easily obtained through the resident at Khatmandoo.

"Ordered, that the Magistrate's proceedings be returned, with directions to resubmit them, together with the further proceedings ordered to be held."

The subjoined replies were received to the above orders. By the Judge of Circuit. "With respect to taking the examination of the Surgeon on oath as to his opinion regarding the appearance of bodies supposed to have died a violent death, I have only to observe, that during the course of six years that I have officiated in the Court of Circuit, I have never received any instructions on the subject, and have always considered the circular order of the 3d of August 1814, as the exception rather than the rule. I shall, of course, in future, be guided by the orders of the Court. As to the shell which was found in the apartment in which the prisoner cooked the meal of the deceased, and in which he ate, it was perfectly clean, and contained nothing whatever. When I received it from the Magistrate, I showed it to both the medical gentlemen of the station, who were of opinion that it contained nothing which would admit of analysis. Therefore the circumstance of the shell, in my mind, weighed neither for nor against the prisoner; and the Court will be pleased to observe, that I did not, in enumerating the facts and circumstances (in the 2d paragraph of my former address) which led me to convict the prisoner, make the slightest allusion to the shell; neither did I consider the evidence of the native *jurrahs* as deserving of credit, it being a matter of notoriety that arsenic has, in its natural state, no smell. Mr. Proctor having gone to Calcutta on leave of absence, and one of the *jurrahs* not being forthcoming, their evidence has not been taken. The Court will please to observe, that the law officer of this

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MUSST. LUDROUN'S case.

Court, after perusing the translation of the Surgeon's letter, and reconsidering the whole of the evidence, is still of opinion that the prisoner is guilty of the murder of her husband by poison, in which opinion I perfectly concur. Accompanying, a specimen of *Dukra*, with a copy of the Magistrate's letter on the subject, is forwarded for the inspection and information of the Court."

By the Magistrate. "I beg to observe, that the muscle shell produced on the trial was taken by me as soon as it came into my possession to Mr. Assistant Surgeon Kennedy, who (in consultation, I believe, with Mr. Fleming) pronounced, that the substance it contained was not in sufficient quantity to admit of analysis: indeed there was nothing apparent, save a faint white streak at the bottom of the shell. My not having recorded this fact, was an omission for which I have to crave the Court's indulgence. In regard to the matter vomited by the deceased, a portion of which is alleged to have been sent in by the police Darogha, I have to submit, that there certainly was an earthen plate produced, which appeared to me, on inspection, to contain nothing but earth, and under that impression, I directed it to be thrown away. With reference to the concluding paragraph of the proceedings of the Court of Nizamut Adawlut, and in furtherance of the instructions therein conveyed, I do myself the honour of sending a specimen of the poison alluded to. It is the root of an herbaceous plant of dwarfish growth, indigenous to the mountains of Thibet, Tartary, Cashmere, and China. It is here denominated *Dukra*, and Bichch'hunagg, and in Nipal, Bikh, and Bikhmah. As far as I can learn, there are three or four varieties of the plant, the roots of which are all more or less powerful in their effects as poisons. The less virulent are used medicinally by the native physicians, and are prescribed by them in cases of venereal, leprosy, white eruptions of the skin, ague, and fever. As a medicine, it is generally administered in the form of an electuary. The sample which accompanies this address, I procured from Khatmandoo from the Resident; and is considered the most fatal, as it is affirmed that a dose of three grains of it will occasion almost instantaneous death. From every thing that I can collect of the nature of the plant, and the poisonous effects ascribed to it, I am disposed to think that it is a genus of the "Aconitum Nopellas," or common monkshood, or wolf's bane." After receiving the above explanation, which left no hope of more satisfactory evidence being procurable in this case, the Court (present W. Leycester and J. Shakespear) were of opinion that the only alternative left was to concur with their law officers in the acquittal of the prisoner, whose release was directed accordingly.

1822.

Dec. 3d.
Case of Oopashoo and others.

HURREENATH,
against
OOPASHOO and five others.

Charge—Dacoity.

Case of a gang of twenty men armed with clubs, who secretly effected an entry into a house, and afterwards maltreated the inmates; held that this is sufficient to constitute the crime of robbery by open violence, as defined in clause 1, section 3, Regulation LIII. 1803.

The trial of these prisoners, charged with Dacoity, attended with violence, and robbing the prosecutor of property to a large amount, was held at the 1st sessions of 1822, for zillah Rungpore. The circumstances of the case, as they appeared in evidence, were as follow. On the 11th of Bysakh, 1229, B. S. corresponding with the 22d of April, 1822; the prisoners, in concert with others, in all about twenty men, disguised, and armed with clubs, having with them torches, oil, a knife, and an iron pestle, assembled in the night time, and went forth in a gang to the house of the prosecutor, which they approached in perfect quietness, and, unknown to its inmates, effected a forcible entry by making a large hole in the side of the dwelling house, partly by digging the foundation earth, and partly by cutting the bamboo mats of which it was made, and also by forcing open the *jhamp* which composed the door. The room they entered was that in which the treasure chest was kept, on the top of which were asleep the plaintiff's two servants, Sona Ram and Bhoee Challoo, the first of whom they seized, and bound with cords, and ordered him at his peril to make a noise; the second they threatened, and got upon his breast, and ultimately secured him by keeping his head down, having put it between the legs of one of the robbers. The noise of these two servants, together with that of the threats from the robbers, awoke the prosecutor and his brother Jainal, both of whom got up to see what was the matter, when the plaintiff was knocked down with a blow on the forehead from a *lathee*, and again several times struck with *lathees* by several of the robbers. He received no wounds, but was much bruised and hurt. His brother was seized, and much beaten, so as to cause him great pain; but he succeeded in effecting his escape. When the torches were lighted does not appear; but the first thing the two servants saw were the burning *mussals* in the hands of the disguised robbers. As soon as the different persons in the house were overpowered and secured, the robbers broke open the treasure chest, and carried off its contents, amounting to the value af 436 rupees, and immediately effected a successful retreat, leaving behind them two *mussals*, a knife, a pestle, a club, and an oil vessel. The first trace of the prisoners was obtained from the servant Sona, who thought he recognized the voice of Oopashoo during the robbery, who, when apprehended by the police, and questioned, made the confession recorded, and named his accomplices. On the apprehension of Kattee, Pullanoo, Nichroo, Kulloo, and Mandoo, they all severally confessed. On search being made, the plaintiff's plundered property was found in the possession of Oopashoo, Kattee, Pullanoo, and Nichroo. Before the Magistrate, Oopashoo, and Kattee, and Pullanoo, repeated the confession of their guilt; Mandoo being apprehended after a proclamation issued by the Magistrate,

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his confession was recorded, and his share of the plaintiff's property was found on his person. He was formerly servant to the plaintiff, and used to sleep upon the treasure chest he thus assisted to rob. Kattee and Pullanoo were both old offenders. Before the Court of Circuit, the defendants denied all knowledge of the whole of the fact, and claimed the property as their own. The evidence of their witnesses disproved their plea, and strengthened the prosecution.

The *futwa* of the law officer of the Court of Circuit declared the crime of Dacoity proved against the prisoners Oopashoo, Kattee, Pullanoo, Nichroo, Mandoo, and Kalloo, and each of them liable to *Tazeer*. In this opinion the Judge perfectly agreed, and considered no doubt to exist as to the nature of the crime perpetrated; the entry into the prosecutor's house being forcible, by an armed gang, who before getting possession of the property they had predetermined to make themselves masters of, exercised different species and degrees of violence on the prosecutor, and the several members of his family, whom when they had sufficiently overcome, they then, in their presence, and against their will, putting them in fear of their lives, forced open the treasure chest, and robbed the prosecutor of his property by open violence. Considering the prisoners fit objects for exemplary punishment, and seeing no good reason for any mitigation of punishment, particularly in the zillah of Rungpore, where the crime of Dacoity still greatly prevailed, it was explained to them, that by the law they were liable to suffer the punishment of 39 stripes of the *corah*, and to be imprisoned in banishment for life. Certain other prisoners who had been committed by the Magistrate were liberated, there being no satisfactory proof of their guilt.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoners Oopashoo, Katee, Pulanoo, Nichroo, Mandoo, and Kaloo, the five last of having been concerned in theft at the prosecutor's house at night, attended with personal violence to the inmates thereof; and the first of having committed the crime, and shared in the booty; and declared them each liable to discretionary punishment by *Acoobut*. By the Court. W. Dorin, (officiating Judge.) "There is, I think, abundant evidence against Oopashoo, Katee, Pulanoo, and Mandoo, consisting of their confessions in the Moofussil and Foujdaree; their indicating each other as concerned; and the fact of articles taken at the robbery of the prosecutor's house being found on each of them. Against Nichroo there is only a Moofussil confession. The fact of its having been made as taken down, is well attested; and he is generally indicated by the others as having had a prominent share in the affair. I would, under all the circumstances, convict him. Against Kaloo the evidence is not so good. There is, as against Nichroo, only a Moofussil confession. And the evidence to that confession stands thus:—Of those purporting to be attesting witnesses, Radhachurn, a ryot, speaks to it. The two others, Shahmahomed and Jharoo, say they did *not* witness it. The Mohurrir is then called, who deposes that he wrote it down, and admits he made two men attest it, who were not there. This prisoner Kaloo is not generally indicated by the others; but two of them, Nichroo in his

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Case of Oopashoo and others.

Moofussil examination, and Mundoo in his Foujdary examination, do name him. As to the crime, I think it comes within the definition laid down in Regulation LIII. 1803, sect. 3, clause 1. Fourteen years imprisonment with stripes seems to me sufficient punishment." W. Leycester, (chief Judge.) "I think the Thana confession, with the proof given to it, and the implication by two accomplices, sufficient to convict. It may be observed, that the implication by Nichroo was made on the same day, and in all likelihood previous to the confession of Kaloo, so that it might have led to the confession." S. T. Goad, (third Judge.) "I concur with the *futwa* of the law officer of the Court of Circuit, and with the Judge of Circuit, in considering this a case of Dacoity by open violence, committed by an armed gang, and with the *futwa* of our law officers and the Judge of Circuit in considering the whole of the prisoners duly convicted; but I am of opinion, that 25 stripes of the *corah*, and 14 years imprisonment, will be adequate punishment." Under these circumstances, the Court, (present S. T. Goad and W. Dorin,) concurring in the conviction, and deeming the offence to come within the definition and penalty of Dacoity laid down in Regulation LIII. 1803, and Regulation VIII. 1808, but considering a mitigated punishment sufficient, sentenced the said Oopashoo, Katee, Pulanoo, Nichroo, Mandoo, and Kaloo to receive each 25 stripes of the *corah*, and to be imprisoned for 14 years with hard labour in the jail at Allipore.

1822.
Dec. 6th.
Gobind Das's case.

GOVERNMENT, *against* GOBIND DAS.

Charge—Wounding, with intent to Murder, and Robbery.

Prisoner sentenced to 21 years imprisonment for the offence of robbing his fellow mendicant (an old woman) in the jungle, and, after beating her with intent to murder, leaving her there for dead.

Gobind Das was charged with wounding Musst. Goorbaree, with intent to murder, and robbing her; and was tried for those offences at the 1st sessions of 1822, for zillah Midnapore.

The evidence against the prisoner in this case rested chiefly on the confessions he made before the Magistrate and in the Moofussil. He stated, that Musst. Goorbaree (who was the prosecutrix in the Magistrate's court) as well as himself, was a mendicant; that they were travelling together during the night through a jungly part of the district; that being tired, they laid themselves down to sleep by a running stream; that his companion (who was an old woman) desired him to embrace her; that he complied with her request, but, on her repeating it, he lost his temper, and struck her with a stone on her head; and that, finding she was senseless, he threw her into the stream, and carried off her clothes, and all that she had upon, and with her. Musst. Goorbarree (who had deserted her usual abode, and had not been heard of since the prisoner's commitment) confirmed part of this statement before the Magistrate. She stated, that she

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GOBIND DAS's case.

recovered her senses shortly after the prisoner left her, and going to the next village, gave the alarm, and had him apprehended.

The *futwa* of the law officer of the Court of Circuit declared the prisoner liable to discretionary punishment by *Tazeer*. The Judge of Circuit concurred in this finding; and as he did not consider the provocation sufficient even to justify the prisoners raising his hand against the old woman, and as it was evident that he thought her dead when he threw her into the water, which, fortunately for them both, revived her, the Judge considered him deserving of the severest punishment with which the law could visit his crime.

The prisoner was convicted by the *futwa* of two of the law officers of the Nizamut Adawlut of wounding Musst. Goorbaree with intent to murder, and robbing her of sundry articles, and declared liable to discretionary punishment by *Acoobut*. The Court of Nizamut Adawlut, (present S. T. Goad and J. Shakespear,) concurring in the *futwa*, sentenced the prisoner to imprisonment with hard labour in the jail at Allipore, for the term of twenty-one years.

1822.
Dec. 6th.
BOWUL BEWAH'S case.

GOVERNMENT
against
BOWUL BEWAH.

Charge—INFANTICIDE.

The offence of abandoning her new born child by its mother in a jungle, which caused the death of the child, punished by perpetual imprisonment.

THE prisoner Bowul Bewah was charged with the destruction of her own infant, and tried for that offence at the first sessions of 1822, for zillah Rajshahye.

It appeared in evidence, that the prisoner, being pregnant, left her own home, and came to the house of her friend Musst. Rai Mallee, in the village of Bagoorah, where, on the following morning, (the 28th Assar, 1229, corresponding with the 11th July, 1822,) she brought alive into the world, a full grown male child, which, with its navel-string uncut, she abandoned in the jungle, and returning to her friend's house, had herself properly taken care of, but immediately on the report of the circumstance being known, absconded. Being traced, she was apprehended in a state distinctly proving her to be the mother of the child, which had been found by one Bukshoo, who was accidentally passing by the spot where she had left it. Both before the police officers and the joint Magistrate, she denied the charge, and said the child was stillborn, and that therefore she abandoned it in the jungle; and before the Court of Circuit, she admitted having brought the child alive into the world in the jungle, and alleged she left the infant on the ground, and went to wash her hands, at a little distance off, when the witness Bukshoo came and carried off the child; and that she, being afraid at not finding the child on her return to the spot, absconded. The evidence distinctly proved the infant to have been abandoned alive, and just as it separated from its mother; that every

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BOWUL BEWAH'S case.

thing skill and humanity could do for the infant was done immediately after it was discovered in the jungle, but that the infant expired a few hours after.

The *futwa* of the law officer of the Court of Circuit declared the crime of intentionally abandoning her new born infant in the jungle, with a view to its there perishing, from which its death ensued, to be proved against the prisoner by violent presumption, and that she was deserving of *Tuzeer*. As to the guilt of the prisoner, the Judge of Circuit fully concurred, and considered her deserving of discretionary punishment, the extent of which, he observed, rested with the judgment of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having perpetrated the destruction of her new born child by exposure in a jungle, and declared her liable to discretionary punishment by *Tuzeer*. The Court (present W. Leycester) fully concurred in the conviction, and sentenced the prisoner to perpetual imprisonment in the jail at Allipore. The Court, observing that a woman named Rai Mullee had been punished by the joint Magistrate as accessary in the above crime, directed that the proceedings of the joint Magistrate on that occasion should be immediately submitted to the Nizamut Adawlut, with any explanation which the joint Magistrate might wish to offer as the ground on which he did not commit the accessary also, it being clearly proper that the principal and the accessary should, in all possible cases, be tried together, if it be only lest the accessary be punished, and the principal acquitted. He was desired also to explain how he considered himself competent to decide in the case of an accessary to murder. The Court observed, moreover, that the Judge of Circuit, in putting the prisoner on her defence, subjected her to a string of upwards of twelve interrogatories, elven at least of which had a direct tendency to criminate the prisoner, and in the course of which she actually did criminate herself. The Court, deeming such practice very objectionable, and inconsistent with the course prescribed for the conduct of criminal trials, desired its discontinuance in future.

1822.
Dec. 10th.
Case of HIMMUT and HERGOPAL.

GOVERNMENT, *against* HIMMUT and HERGOPAL.

Charge—CATTLE STEALING.

This case was referred to the Nizamut Adawlut, at the request of the acting Magistrate of the district of Meerut. Two persons, Doulut and Saheb Singh, had been robbed of their cattle, about fourteen months before a complaint was instituted, when these persons related, that a bullock and a buffalo were afterwards restored to them by the two prisoners Himmut and Hergopal, to prove which they cited two witnesses, Futteh and Dilsookh. The former deposed to both having

Section 5, Regulation III. 1821, construed as intended to limit the period of appeal

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Case of HIMMUT and HERGOPAL.

merely as it relates to appellants, without restricting the discretionary authority of supervision possessed by the superior Courts; and the Nizamut Adawlut held, that it is not necessary for a Court of Circuit to furnish the Magistrate with a copy of the petition of appeal against his proceedings, though a copy of the order passed in appeal should be furnished.

promised to return the stolen cattle, and that eight months subsequent to the perpetration of the theft, Hergopal brought the cattle above mentioned to the prosecutors; but the other witness, Dilsookh, before the Magistrate declared his ignorance of the circumstance; and as the prisoners, with whom the prosecutors had been long at enmity, and who were sentenced by the Magistrate to receive thirty rattans each, and to be imprisoned and kept to hard labour in irons for the period of two years, were not, in the opinion of the Judge of Circuit, proved guilty, he recommended their being immediately discharged, as they were stated to be Zemindars, and men of good character. The reference to the Nizamut Adawlut originated in the doubt entertained by the acting Magistrate, as to the competency to interfere possessed by the Judge of Circuit under the Regulations. His reasons for doubting on the subject were contained in the following communication, addressed by him to the Judge of Circuit, a copy of which accompanied the proceedings referred.

"It appears that the trial was concluded and decided on by me on the 24th of November 1821, and that the prisoners have not to this day appealed the case. It is true that Kunhy, a Goojur, gave a petition against the decision to Mr. Mackenzie; but who he is, what right he has to interfere, whether authorized by the prisoners or not, does not appear. The appeal was made to the Judge holding the second sessions of 1821, who did not think it necessary to reverse the decision. You now, after upwards of nine months, without the prisoners' acknowledged consent, take up the business, and call for the papers. Three questions arise from this:—

"First. Can the Court of Circuit take up cases appealed by people not parties implicated in the decision?

"Second. Has the Judge of Circuit holding a session a right after one month to receive an appeal?

"Third. Can a Judge of Circuit legally entertain an appeal, in a case when the decision was made previous to the sessions before last?

"With regard to the first point, I cannot see any right in any unconcerned party appealing against a decision which does not affect him. In this instance, there is no proof even of the acquiescence of the prisoners in the appeal. With regard to the second point, the construction of section 5, Regulation III. of 1821, appears to me to be, that an appeal must be made within the period of one month from the date of the order: at all events, leaving it optional to the parties to appeal to the sudder station within the period, if no sessions are then holding at the zillah station, or to the Judge holding the sessions, if there are, within the term of one month after the order has been passed. I ground this definition both from the wording of the Regulation, and the acknowledged inconvenience, by the preamble of the Regulation, "which has been experienced from the unlimited privilege at present exercised of appealing in Foujdarry cases." If this is the right construction of the law, the petitioner, admitting for a moment his right to appeal, which I deny, has been at least eight months too late in exercising his privilege. The third point must be distinctly answered in the negative, as by clause 1, section 5, Regulation III. of

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Case of HIMMUT and HERGOPAL.

1821, it is distinctly laid down, 'Nor shall any appeal from the order of a Magistrate or joint Magistrate be admitted, unless preferred to the Court of Circuit at the sudder station within the period of one month from the date of the order, or to a Judge of Circuit holding the sessions next ensuing after such order shall have been passed, unless it shall be proved that the petitioner was prevented by circumstances totally beyond his control from presenting his petition within the prescribed period.' This extract not only proves, in my mind, that the appeal against my order cannot be received by the Judge holding the sessions for 1822, as the order appealed against was passed before the termination of the second sessions of 1821, but also totally excludes every Judge of Circuit listening to the appeal after the lapse of one session, except the petitioner can prove that circumstances totally beyond his power prevented him from presenting his petition to Mr. Mackenzie. This he cannot do, as he presented a petition which was received, and as the Judge receiving it did not think necessary to reverse my decision, I conclude no other Judge has that power. I have thus, I hope, proved to you, that the petitioner has no right to appeal; that after one month, no Judge of Circuit has authority to receive an appeal, unless the petitioner was prevented by circumstances totally out of his power from appealing, which is not alledged in this case; and that at all events, if it is acknowledged as a right of the Court of Circuit to receive appeals at the zillah station after the lapse of a month, that the Judge cannot, holding a session which takes place after one has been held subsequent to the order appealed against, on any grounds, listen to an appeal which had been in due order received by the previous Judge. My reasons for stating my sentiments to you at large are, that I conceive that the circumstances alluded to in the preamble of Regulation III. of 1821, attach to this case; that reversing a decision after nearly a twelvemonth, is against both the letter and the spirit of the law; that it must have an injurious tendency in disturbing decisions acquiesced in so long and to this day by the prisoners; and that the privileges of appealing in Foujdary claims ought to be abridged as much as possible, and that privilege allowed only to the parties concerned. I am also desirous of bringing one point to an issue, in order to know how to act in future, namely, I wish to have an authoritative explanation of the law, whether an appeal from the order of a Magistrate must be lodged either at the sudder or at the zillah station within the period of a month, or whether an appeal will lie to the Judge at the sessions after the lapse of a month. I therefore request you will do me the favour to refer the point for the decision of the Nizamut Adawlut."

In submitting the case accordingly, the Judge of Circuit observed, that the petition was presented by the uncle of one of the prisoners, in the first instance, to the Court at Bareilly, and afterwards to Mr. Mackenzie, whilst holding the 2d session of 1821, on which no order was passed; that he was perfectly aware of the Regulation quoted by the acting Magistrate; but that the prisoners being in confinement in jail, he did not deem it proper to reject their petition,

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and therefore sent for the Magistrate's proceedings, a right he conceived every Judge on Circuit had, as well as to submit to the superior Court such observations as might be deemed necessary, in the event of a prisoner having, in his opinion, been sentenced to a punishment not merited, as appeared to him to be the case in the present trial.

The Court of Nizamut Adawlut (present W. Leycester) observed, that Mr. Cowell, having taken up a case upon which no order had been passed by Mr. Mackenzie, was perfectly competent to receive the petitioner's appeal, as had been more particularly explained in the Court's letter of the 29th of November, on another reference. The Court directed, that Mr. Cowell proceed with the case, and, if necessary, refer it to the Court of Circuit at large. The letter of the 29th November, issued conformably to the concurrent opinion of the Court at large, was to the following effect. "The objections of the Magistrate on the present occasion appear to be threefold. In the first place, he questions your competency to revise under the circumstances stated. In the second place, he thinks that he should have been furnished with a copy of the petition of appeal; and in the third place, he conceives that the Court exercising the power of revision should have sent to him a copy of their proceedings.

"On the point first noticed, the Court are of opinion, that section 5, Regulation III. of 1821, cannot be considered applicable to the case in question; that the general power of revision vested in the Courts of Circuit are not at all affected by that enactment; and that it merely limits the period of appeal as it relates to appellants, without restricting the discretionary authority of supervision hitherto possessed by the superior Courts. In the present case, however, the Court conceive, that independently of the exercise of his own judgment as to the propriety or otherwise of the decision, your second Judge would not have been justified in rejecting an appeal against it on the ground, that the appeal had not been made to the Judge of Circuit who held the sessions ensuing after the passing of the order petitioned against. Mr. Mackenzie, when he quitted Meerut, had not completed the regular duties of the sessions, from which it is fairly inferrible that he could not have had much leisure to attend with efficiency to miscellaneous business; and Mr. Cowell was specially directed, under instructions from this Court, dated the 5th of April and 7th of June, to try the cases left undecided by Mr. Mackenzie, and to furnish a full report on the proceedings of the officiating Magistrate. The duties of the second sessions of 1821 not having been completed by Mr. Mackenzie, it was the duty of Mr. Cowell, acting conformably to the instructions with which he was furnished, and agreeably to the spirit of the enactment quoted by Mr. Smith, to receive a petition of appeal against, or without such petition to call for, the proceedings of the officiating Magistrate, although, subsequently to the date of the order proposed to be revised, there had been an intervention of one sessions, the duties of which were not brought to a conclusion. It is almost superfluous to add, that as to this point, the Court attach no weight to the objection urged by the officiating

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Magistrate, and that they consider the proceedings of your Court to have been strictly proper and regular.

With regard to the second point, the Court observe, that it is not incumbent on the superior Courts to furnish the Magistrates with copies of the petitions of appeal presented against their proceedings, and that the reason assigned by Mr. Smith for the necessity of such practice is by no means pertinent. In the 4th paragraph of this Court's letter, dated the 14th December 1821, referred to by the officiating Magistrate, the mention of the petition of Nuzur Ahmud Jemadar was introduced incidentally. It was merely stated, that Mr. Smith, having been furnished with a copy of the petition of that individual, did not deny a certain allegation therein contained, although from the fact of his having been furnished with the copy, he had an opportunity of so doing. No mention was made of the necessity or propriety in a general point of view of furnishing the Magistrates with copies of petitions on appealed cases. They add, therefore, that such documents, cannot be claimed as a matter of right, and that on some occasions substantial reasons may exist for withholding them.

As to the third point, the Court conceive, that the practice of furnishing the inferior Courts with the copies of final orders passed by the superior Courts in cases of revision, is desirable and expedient; but that your Court having virtually conformed to this practice in the present instance, the officiating Magistrate had no reasonable cause to complain of omission.

1822.
Dec. 31st.
Case of PURTAB SINGH and others.

GOVERNMENT, *against* PURTAB SINGH and others.

Charge—RESISTANCE of PROCESS.

Process issued by a Thanadar at the requisition of an Ameen, who reported to him that the former zemindars were ripe for rebellion, held to be illegal, and a charge of resistance

THE prisoners Purtab Singh, Teeka Singh, Kishun Singh, Soojan Singh, and Ghunsam, charged with "resistance of process, and opposing the execution of the orders of the collector of the district, and of the Court," were tried at the 2d sessions of 1822, for zillah Cawnpore. The facts of the case, as they appeared in evidence, were as follow.

The village of Bissoha, in Pergunnah Mungulpore, was sold some years before by the Collector of the district, for a balance of revenue, and purchased by Nazer Ullee and Kullub Ullee, whose heirs were at the time of the trial in possession. For the recovery of this estate, a suit was instituted before the special commission by Jyraj Singh, Makhun Singh, Teeka Singh, and Hiat Singh; but after a time, the three former persons presented a *Razeenama* to the Commissioner, who advised them to withdraw it; and on their refusing to do so, it was rejected, on the plea that it was not signed by Hiat Singh, the 4th plain-

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of process is not a fit subject of commitment to the Court of Circuit.

tiff. At a subsequent period, however, it was accepted, and the suit was tried only on the plaint of Hiat Singh, and finally dismissed on the 6th April, 1822, on its being proved that Hiat Singh had never been in possession prior or subsequent to the session of the ceded provinces. While the suit was under investigation, Bhyroonath, *Vakeel* of the defendants, on the 25th September 1821, presented a petition to the Commissioners, setting forth, that the ryots in this and several other estates refused to pay their rents; in consequence of which, the defendants had lost a considerable sum of money, and praying that measures might be adopted to enforce payment. On the 29th, it was ordered that copies of the petition should be sent to the Judge, and to the acting Collector, that they might explain to the cultivators the necessity that they should continue to pay their rents to the persons then in possession, until the suits were decided; and on the 1st of October, the Magistrate ordered the Thanadar to direct the cultivators to pay as usual, and to put a stop to all disputes. Some time before this, the Collector had, at the request of the defendants, appointed Girdharee Loll, as an Ameen to collect the rents of Mouza Bissoha; and on the 29th of October, the Thanadar addressed an *Arzee* to the Magistrate, acknowledging the receipt of his *Perwanah*, dated the 1st, and "stating, that as on the 20th he received a letter from Girdharee Loll, Ameen, complaining that the former Zemindars were ripe for rebellion, he had on the 21st despatched Mokarim Khan, Burkundaz, to the aid of the Ameen, and on the 23d had proceeded to Bissoha in person, with a part of the police establishment; that as he entered the village, he saw a Chuprassee named Juwahur, pursue and seize Jyraj Singh for a balance of rent, which he (the Thanadar) advised him to pay: and that, while talking, he was surrounded by ten or twelve persons armed with clubs, who had accompanied Purtab Singh; that the said Purtab raised his club at the Thanadar, but Jyraj Singh prevailed on him to lay it down, when the Thanadar explained to Purtab the orders of the Magistrate, and demanded from him a *moochulka*, which he refused to execute." On this *Arzee*, an order was passed by the Magistrate, that an engagement should be taken from Purtab Singh to appear in Court in ten days, on failure whereof, to forfeit 100 rupees. On the 14th of January 1822, the Thanadar reported, that Juggunath, a Burkundaz, had been sent to summon Purtab Singh to the Thana for the purpose of executing the *moochulka*, but that he refused to attend; and on the 19th, an order was passed for the seizure of Purtab. On the 23d of May, the Thanadar reported, that Purtab Singh, having been for some months on a visit to his relations across the Jumna, execution of the orders of the Court dated the 19th of January, had been necessarily delayed; and that now the Jemadar of the Thana having been sent to seize him, he resisted, and declared that he would not obey till a force was sent against him. On the 28th of May, a *perwana* was addressed to Purtab, and a party of *Suwars* were ordered to proceed to Bissoha, to aid the Thanadar in his apprehension; and on the same day, an *Arzee* was read from the Thanadar, enclosing a letter from Mahomed Sadik the *Tuhseeldar*, stating that Purtab and Teeka

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had assembled a force in the village to resist the process against them. On the 31st of May, the Thanadar addressed another *Arzee* to the Magistrate, setting forth, that he had forwarded by the Jemadar of *Suwars*, the Magistrate's *perwannah* to Purtab Singh; but that he had closed the gates of his house, and all his relations were armed, and ready for resistance. On the 1st of June, a military force was called for by the Magistrate, and the Nazir of the Court was directed to precede the troops, and to carry a *dustuck* for the apprehension of Purtab Singh and his son Teeka Singh. On the 5th of June, Irshad Ullee, Nazir of the Court, drew out a statement of what had occurred. He arrived at Bissoha on the 3d, and found a number of armed persons collected. Purtab Singh had closed his doors, but at the persuasion of Busteeram he came forth, and after having remonstrated with the Nazir on the folly of exposing his life on such an errand, he began to enquire the nature of the offence with which he was charged, alledging, that being an old man nearly blind, and who had long given up cultivation, he could not be in balance, and was not aware that any criminal offence could be laid to his charge. The Nazir of the Court executed his commission, observing, that he came with no hostile intentions, but merely to explain the orders of his master, requiring that Purtab should attend the Court; and some sort of promise that he would do so appeared to have been made, as the Nazir wrote to the Thanadar of Akberpore to stop the detachment at that place. During the night, however, the people again assembled; and the Nazir, fearing that Purtab's relations would not allow him to deliver himself up, again wrote to the Thanadar of Akberpore, on the 4th, to send on the sepoys. In the evening of that day, Purtab Singh delivered himself up, shortly after which the detachment arrived at Bissoha. During the night, eight or nine other persons were apprehended; and on the 6th, Teeka Singh delivered himself up to the Magistrate's assistant.

In forwarding this case for the consideration and orders of the Nizamut Adawlut, the Judge of Circuit accompanied it by the following observations. "I feel it to be my duty to object to all the proceedings adopted by the Magistrate on this occasion. The order passed by the Commissioners on the petition of Bhyroonath was irregular, as, if they thought proper to interfere at all in the realization of the revenue, I am of opinion, that they should have referred the party to the Collector, or to a summary suit, in Court; but their order was in itself of little importance, and the mere explanation to the cultivators of their duties pending the suit, would have produced no bad consequences. The proceedings on the commitment do not include any requisition from the revenue officer; and from the acting Collector's proceeding of the 21st instant, the Nizamut Adawlut will perceive, that the acting Collector never applied for the aid of the Court; consequently the charge of opposition to the execution of the orders of the Collector of the district falls to the ground, there being no such complaint by the only person legally authorized to prosecute. The village of Bissoha is assessed at rupees 2141, and underlet to the cultivators at rupees 2741, of

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which sum only rupees 229, 1. 3. remained unpaid, as appears by the *wasilbakee* forwarded by the *Tuhseeldar* to the acting Collector; and from the depositions taken on the trial, it seems that Teeka Singh merely withheld his share of the 600 rupees profit until the suit before the special commission should be decided. The first instance of any thing like resistance, was shewn to the Thanadar, when he, on the 23d of October, merely on receipt of a note from the *Ameen*, went with a party of Burkundazes to his support; but to establish this fact, no witnesses were summoned. It is proved, that at this time Purtab Singh expressed his surprise that he should be called on to execute a *Moochulka*, as he was neither cultivator nor surety; and had this been known to the Court, some enquiry might have been deemed necessary, before he was called on to appear in Court in ten days. The conduct of Purtab Singh to Juggurnath Burkundaz, in desiring him to read the summons to an adjacent Burghaut tree, was extremely insolent; but it was not *proved* when a *dustuck* was issued for his apprehension. His conduct in shutting himself up in his house when a *perwannah* was sent to him by the Jumadar of *Suwars*, was equally indefensible; but the Regulations direct, that such conduct shall be proved on oath, and that proclamation shall be issued requiring the offender to give himself up within a given time, thus making allowance for human frailty, and giving time for the passions to subside ere the arm of the law is stretched forth: but in this instance, all these rules were overlooked, and without *proof* of any one charge, indeed, without the existence of any charge, except that of having been insolent to a Thanadar, a military force was called out by the Magistrate. 'I beg to be clearly understood, as by no means advocating the cause of Purtab Singh. He may be, and I dare say that he was, a very turbulent character; but be he what he may, he is still under the protection of the laws, and in my opinion is not liable to punishment for resistance to process unauthorized by those laws."

The law officer of the Court of Circuit declared Purtab Singh, Teeka Singh, Kishun Singh, Soojan Singh, and Ghunsam, convicted of resistance to the orders of the Magistrate, for which they were liable to *Tazeer*. But for the reasons above stated, the Judge disapproved of this *futwa*. Busteeram was acquitted by the law officer, and released.

The prisoner Purtab Singh was convicted on strong presumption by the *futwa* of two of the law officers of the Nizamut Adawlut, of disobedience to the order of the Adawlut and Collector, and of having been prepared for resistance and turbulence with the officers of Government, and of having urged the *Malgoozars* not to pay their rents; the prisoner Teeka Singh of not paying his rents, audacity, and disobedience to the orders of Government; and Kishen, Soojan, and Ghunsam of aiding and abetting Pertab Singh in his preparations for violence, turbulence, and disobedience to the orders of Government; and all the prisoners declared liable to discretionary punishment by *Acoobut*. By the Court. W. Leycester, (chief Judge.) "It is very clear that the Magistrate had no authority to issue the order of the 1st of October 1821, empowering the Thanadar to restrain the former Zemin-

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dar, &c. &c. more particularly without telling them the means to be used: and that the going forth of the police officers on the note of the Ameen, to do something which provoked what is called resistance, was equally illegal. But though this resistance was provoked by the illegal conduct of the Magistrate and Thanadar, (matter for separate consideration,) still, when the resistance did take place as reported, I think the Magistrate was entitled, under Regulation IX. of 1807, to summon Purtab, and afterwards to seize him, as a measure apparently necessary to secure the peace. The Thanadar ought to have reported what had been done to execute the order to seize Purtab, instead of leaving it over four months, that the Magistrate might have decided whether he would proceed further against him, or whether his absence was not a sufficient security against a breach of the peace; and though the Magistrate, on there again appearing a spirit of opposition, might have resorted to the measure of proclamation, there still was no necessity for relinquishing the attempt to seize him. In the end they are seized, or gave themselves up. But what are they committed for? Why did not the Magistrate proceed under section 2, Regulation III. of 1804? I would acquit them, as not proper objects of commitment, and would order their release, considering them to have suffered more than they were liable to, under the 5th section, clause 2, of Regulation III. 1804." The third Judge (S. T. Goad) concurred generally in this opinion, and a sentence was issued to the effect, that though the Court concurred partly in the *futwa*, yet not considering the prisoners to have been proper objects of commitment before the Court of Circuit, and considering the imprisonment which they had undergone as more than they were liable to under clause 4, section 2, Regulation III. of 1804, the Court directed that they should be immediately discharged.

GOVERNMENT, *against* LOKMUN.

1823.
Jan. 2d.
LOKMUN'S case.

Charge—BREACH of TRUST and EMBEZZLEMENT.

The Treasurer of a Collector's office sentenced to punishment for paying money out of the Treasury under illegal and irregular orders of the Collector, which he well

THE trial of Lokmun, late *Khizanchee* of the Collector's office of Cawnpore, for "breach of trust, and embezzling the public money," came on at the second sessions of 1822, for that district. The following is a brief statement of this case.

It appeared from the evidence in this case, especially from the proceedings of the Collector, and from the books of the *Khizanchee*, that Mr. Ravenscroft, the Collector of Cawnpore, drew the salary of Collector in advance to the month of August 1823, in addition to which he granted to himself a bill on the general treasury for two months salary, which he had previously received; that at various times he granted loans from the treasury under his charge to a Mr. Foley, to the amount of 1,50,000 Rupees, (a considerable part of which had been repaid,) and that to conceal his misconduct, these items were

1823.
LOKMUN'S case.

entered in the inefficient balance under the head of "Revenue charges general." The prisoner pleaded not guilty to the charge, and there was no proof that he personally embezzled any part of the public money, though he, as well as every one of the *Omlah*, must have known that he was acting improperly, in conniving at Mr. Ravenscroft's peculation.

knew were illegal and irregular, he being *de facto* Treasurer, though not confirmed, and though the Collector himself had not been brought to trial.

The law officer of the Court of Circuit acquitted the prisoner, but the Judge disapproved of the *futwa*, not because he thought Lokmun more deserving of punishment than the *Jumma Khurch nuvees*, (or accountant,) or any other of the Collector's officers; but inasmuch as the Revenue Board had thought proper to prosecute this man, and no doubt could exist of his guilt, by connivance at his master's plunder, it did not rest with the Court to object to the propriety of the Board's orders. There was, however, he observed, one circumstance which rendered it doubtful whether he could be considered a public servant, namely, his nomination not having been sanctioned by the Board of Commissioners.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Lokmun of having, while entrusted with the office of *Khizanchee* to the late Collector of Cawnpore, aided and assisted a breach of trust and embezzlement of the public money by the said Collector, by paying money out of the public treasury under illegal and irregular orders of the said Collector; and declared him liable to discretionary punishment by *Acoobut* for the offence.

By the Court, C. Smith, (second Judge). "I see nothing in the objection that Lokmun, the prisoner, had not been confirmed in the office of treasurer by the Board of Commissioners. That he was *de facto* treasurer at the time of making the disbursements to which this case relates, is sufficient. Nor, considering the little prospect which now exists of Mr. Ravenscroft's being apprehended and brought to trial before the Supreme Court, do I discover any adequate reason for delaying the decision of Lokmun's case any longer. Upon the merits of the case, I differ with the Judge of Circuit. That Lokmun is not proved to have personally embezzled any part of the money, the Judge of Circuit himself acknowledges; nor is it established that he disbursed any part of the sums alledged without a treasury order signed and sealed by Mr. Ravenscroft, the Collector. By section 11, Regulation XXV. 1803, it is declared, that "the native cash-keeper is prohibited from paying any money without such written authority, under the penalty of being made responsible for the amount, should the payment be afterwards found to have been unduly made." This rule to me seems to hold out complete irresponsibility to the cash-keeper, even for undue payments, provided he make them under a warrant signed and sealed by the Collector. As to connivance, the only proof that exists of it in this case is obedience. That Lokmun held the office of cashkeeper, and as such had the duty of disbursing all issues for which he received the Collector's warrant, and that he did so disburse such sums, is all that appears. There is nothing that shews him to have had any private or particular connexion with Mr. Ravenscroft. I do not therefore comprehend

against what law he has offended, that he should be deemed a fit subject for punishment. The Circuit *futwa*, in my opinion, takes a correct view of the case; and my voice is, that the prisoner be forthwith released. The case of Avudh Loll, decided by this Court in May 1820, and alluded to in the pleader of Government's petition on this trial, is not in any way applicable. Avudh Loll was not treasurer, nor could he produce any authority for his payments to Mr. Parry but Mr. Parry's private *perwana*; and of the irregularity and illegality of Mr. Parry's proceedings, and the application of the sums paid to Mr. Parry's personal and domestic expenses, he seems to have been perfectly aware. That he was so is sufficiently clear from his own petition adverted to by the Circuit Mooftee, and from the evidence of Mr. Parry's Khansaman."

J. Shakespear, (third Judge.) "I do not concur in the view taken of this case by our second Judge. It appears from the evidence, that the prisoner Lokmun filled the office of treasurer in the Collector's office at Cawnpore. That under orders issued to him by the Collector, Mr. Ravenscroft, he at various times paid away from the treasury large sums of money to Mr. Foley and to Mr. Ravenscroft, which appear to have been embezzled from the Government funds. The prisoner pleads, that he acted under the orders of the Collector, and that therefore he is not responsible. This defence might be admitted with respect to the sums paid to Mr. Foley, because it is no where proved that he knew that there was any thing irregular in those payments; but in the payments made to the Collector himself, or on his account, it distinctly appears, from an extract taken from the prisoner's account book, and proved to be correct by the oath of Rampershad, that the prisoner paid rupees 12,619. 7. 2. on the 17th of February, 1820, as an *advance* for Mr. Ravenscroft's salary not then due, and again on the 13th of June, 1820, rupees 5,000, as an advance for the Collector's salary. It is not to be believed that the prisoner could have issued these large sums on such an account, without knowing full well that the Collector was acting fraudulently; and the prisoner, therefore, in my opinion, is liable to punishment for conniving at the fraud and embezzlement committed by Mr. Ravenscroft. Concurring therefore, with the *futwa* of our law officers, I propose that the prisoner be sentenced to three years imprisonment."

W. Dorin, (fourth Judge.) "I think the items of the 16th February, and 12th June, 1820, (viz. 12,619, and 5,000 rupees,) advanced to Mr. Ravenscroft by his own treasury order for salary in advance, are sufficiently established to have been paid by the defendant Lokmun from the public treasury, he being then *Khizanchee de facto*, (which is quite sufficient,) with a knowledge that such payment to Mr. Ravenscroft must have been unauthorized and irregular. The last of the items seems to have been for salary in advance as far forward as May, June, July and August, 1823. We have it not very strictly in proof that the money was never replaced; but still the witness Omed Rai (in the Foujdaree) specifies that a balance was still due from the late Collector, as well as from Mr. Foley; and I think we must view it as a breach of trust, with regard to the public money, by Mr. Ravens-

1823. croft, (probably extending to embezzlement,) and Lokmun's share knowingly aiding and abetting the same. I do not think the conviction will come under Regulation II. of 1813, for the treasurer did not himself use the money; but I hold him clearly guilty of a misdemeanor, (and our *futwa* has so declared him,) in having aided the offence of Ravenscroft by culpable and criminal neglect of his own duty*. It is impossible not to observe, that this case has been tried in a very careless manner. The treasury orders, under which the monies are stated to have been paid, should have been on the record, that we might see the terms in which they ran. It is also not in proof on the record, (though it is mentioned incidentally in the Foujdaree papers,) that there is still a balance due on account of the payments to Mr. Ravenscroft and Mr. Foley, respectively. Another very astonishing circumstance is that there is a copy of a *farighkhuttee*, or general acquittance to the defendant Lokmun, dated 25th September 1820, (after his removal,) and given, I suppose, by some Collector, but with the English signature not copied. The original now sent, bears apparently the initials S. R. C. May 1820. Lokmun has apparently been in confinement already from the 24th December 1821. He was never bailed, the bail offered (5000 rupees) being objected to by the Board. Under these circumstances the proposed sentence may be too severe. Besides, looking at the loose mode of the trial, it seems as well to have the record made more complete before we proceed further.

LOKMUN'S case.

Agreeably to this opinion, previously to passing any sentence, the Court desired that the Court of Circuit would obtain and transmit to the Nizamut Adawlut the original treasury orders (or authenticated copies of the same) under which the monies alleged to have been paid illegally out of the treasury on account of advances to Mr. Foley, or on account of the Collector's salary in advance, were so paid by the *Khizanchee*. The Court expressed their regret that the circuit Judge should not have deemed it necessary to place these documents on the record of the trial. The Court further desired to have a correct copy of the *farighkhuttee* (No. 14, of the Foujdarry papers,) the copies filed being imperfect, as far as regarded the English signature.

The original treasury orders of the 16th February and 12th, having subsequently been transmitted, the fourth Judge proposed that the Court should proceed to pass sentence, observing, that though there was an awkwardness in no proceeding having been hitherto held against the Collector, still it seemed probable that no proceeding would be held, and that the native officer ought not to escape on that account. He suggested, however, that six months, in addition to the imprisonment already suffered, might suffice.

W. Leycester, (chief Judge.) "The payments made by the prisoner are something more than unduly made. They are made illegally and wrongfully, and the prisoner knew as well as every one

* Vide Sections 1, 2, and 3, Regulation XXV. 1803.

else, that many events might happen which would prevent the late Collector from performing the duties up to the distant period for which he had paid himself. Such event did intervene, which renders the surplus drawn salary a manifest embezzlement, in which I consider the prisoner involved, as a participator in the act, if not some how or other in the profit. Considering the time he has been in jail; that a lenient sentence will suffice for an example, and that he may perhaps have been, or hereafter may be, made liable for the sums embezzled, I agree in the proposed sentence of six months imprisonment without labour or irons." A sentence to the above effect was passed accordingly.

1823. LUKMON'S case.

GOVERNMENT,
against
BUNWAREE.

1823. Jan. 9th. BUNWAREE'S case.

Charge—MURDER.

THE prisoner Bunwaree was tried for the murder of his wife Musst. Rutnia, at the 2d sessions of 1822, for zillah Furruckabad. The facts, as they appeared in evidence, were briefly as follow. On the 14th of June 1822, early in the morning, the prisoner inflicted a blow on his wife below the navel, with a large knife, which caused her death in about twelve hours, and no cause for the act was assigned; but on trial, a plea of insanity was set up. At the Thana and before the Magistrate, the prisoner answered to the charge, and pleaded not guilty; but before the Court of Circuit he stood mute. The depositions of several persons regarding his state of mind were taken, and they considered him insane; but they were unable to state any circumstance, except the act of murdering his wife, from which previous insanity might be inferred. The civil Surgeon, the Darogha, and native doctor of the jail deposed, that in their opinion the prisoner was sane, and that his obstinate refusal to speak arose from the hope of thereby escaping the punishment due to his offence.

The Court did not think fit to apply the provisions of a Regulation to an offence committed subsequently to the date of its being in force, but previously to the probable date of its receipt at the place where the offence was committed.

The law officer of the Court of Circuit declared the prisoner convicted of the wilful murder of his wife, and liable to capital punishment by *Kissas*; and in this conviction the Judge of Circuit concurred, adding, that as far as he had been able to observe, from the prisoner's looks and demeanor, during the two days he was before the Court, he appeared to feign insanity. In submitting this trial, the Judge of Circuit forwarded for the perusal of the Court the original proceedings held by the Magistrate on the occasion of the prisoner's wounding his wife with a sickle on the 2d of December 1814, as the relations and neighbours of the prisoner, in their depositions, had referred to that occurrence in proof of his former insanity.

The *futwa* of two of the law officers of the Nizamut Adawlut declared the act of violence by which the deceased Musst. Rutnia lost

1823. her life, to be fixed, by strong presumption, on the prisoner Bun-
BUNWA- waree, her husband; but found that, by reason of insanity at the
REE'S case. time of the act, and before and after its commission, he was not liable to punishment as a criminal."

By the Court. S. T. Goad, (third Judge.) "I concur with the *futwa*. In the face of the evidence of Rambuksh, Munsookh, and Gomanee, witnesses, (who though of the same tribe, do not appear to be related to the prisoner,) that the prisoner had exhibited signs of insanity some days before the wounding; and in the face of the declaration of the deceased, (the only evidence against the prisoner,) that he had wounded her in a state of insanity, I do not think the prisoner can be convicted of the murder, or that there are sufficient grounds to go against the *futwa*, though I think that the prisoner is now feigning madness."

W. Dorin, (officiating Judge.) "In this case, the act of violence by which the deceased lost her life, is sufficiently fixed on the defendant, her husband; viz. the wound of an iron instrument in the belly. Our *futwa* finds that he was mad, and cannot be punished. Under the late Regulation, we may, if we chuse, go against that *futwa*. It will be observed, that the persons who speak to the madness are chiefly the relatives of the accused, persons interested in his escape. They do not say he showed any madness since the former proceeding against him in 1815 for wounding the deceased, his wife; but say, that the act then committed was also caused by madness. The Magistrate, on that occasion, came to a contrary conclusion, and sentenced him to three months imprisonment. Two villagers of Kadirgunge then examined, say they never before knew him unlike other people, but the day he wounded his wife he did seem mad, and they infer it was madness caused it. Yet it seems that he called his wife: she did not come, and he instantly struck her, which is any thing but conclusive as to madness. In the present case, the civil Surgeon, the jailor, the native doctor, all go against the idea of his being mad; so does the Circuit Judge's personal observation on the trial. And it is remarkable that his insanity, real or alleged, seems only to have injured his wife, the individual of all others most exposed to the effects of a man's violent temper. On the other hand, it must be observed, that the chief evidence to fix the fact on the defendant, is the declaration of his wife shortly before she died; and she says, her husband got mad, and gave her the wound. We have thus no ostensible cause to which the act is assignable, unless we assign it to a cause similar to that in the former instance, viz. getting suddenly enraged with his wife. To make insanity a competent plea, I imagine it is necessary that its existence, permanent or occasional, should be clearly shown; and in the latter case, that the act should be clearly connected with the mental disease; for an act committed during lucid intervals is just as much punishable as the acts of other men. In every murderous act there may be said to be some degree of insanity, yet it cannot be allowed that every man who in a fit of rage kills another shall get off as a maniac. I would go against the *futwa*,

1823.
BUNWAREE'S case.

and sentence this man to imprisonment with hard labour for life. A capital sentence would not, I think, be advisable. It is a case, however, which requires to be very attentively weighed.

C. Smith, (second Judge.) "In the view of the case, I entirely concur with the officiating Judge; but I doubt as to the applying of Regulation 4, 1822, for the purpose of going against our *futwa*. That Regulation, though dated 29th March, did not reach our office till the 8th of May, and probably got to Futtehgurh by the end of that month. From Futtehgurh, Kadirgunge, where Bunwaree lived, and murdered his wife, is stated to be distant five-and-thirty coss. It is hardly supposable, therefore, that the Regulation could have been there promulgated by the 14th of June, the date on which Rutnia was killed. Upon this ground I am of opinion, with the 3d Judge, that we ought to follow our *futwa*, and pass the usual orders as to the conditional release of the prisoner." Under the *futwa* of their law officers, therefore, the Court directed that the prisoner be detained in proper custody, until the Magistrate should be satisfied that he is perfectly sane; and that he be not then discharged, unless his friends should enter into engagements, to the satisfaction of the Magistrate and Nizamut Adawlut, to take such charge of him as might prevent his doing further mischief.

GOVERNMENT, *against* KALACHAND.

1823.
Jan. 31st.
KALACHAND'S case.

Charge—MURDER.

The prisoner convicted of killing his wife by cutting her throat with a razor, (which he obtained from a house close by,) after she had been committing adultery with a stranger, but at a time when the homicide was not justifiable in law;

THE prisoner Kalachand was charged with the murder of his wife, named Pudummala, on the 25th of Chyt, 1228, corresponding with the 6th April 1822, and tried for that offence at the 2d sessions of 1822, for zillah Backergunge.

The circumstances of the case were these. On the 6th of April 1822, Mussummaut Bishenpireea went to the house of Kalachand the prisoner, and desired admittance, the door being shut; but no answer was made. Another female, Mussummaut Soondrie, a relation, then came, and went into the house by a back door. On entering, she saw a quantity of blood on the floor. She came out again, and told this to Mussummaut Sooburnee, who immediately reported the circumstance to Rajnarain her husband. Rajnarain came to the house of the prisoner, and saw the body of Kalachand's wife, (the prisoner having made his escape.) Rajnarain on this gave notice to the *Eatimamdar* of the village, who immediately sent intelligence to the Thana. Rajnarain, with Rai Chand, and Mohummud Ukbur, went in search of the prisoner, and found him in the house of Ramsoonder, an iron-smith, where they apprehended him. On the way to the Thana, the prisoner confessed to them that he had murdered his wife, but would not assign a reason for it. They brought him to

1823.
KALACHAND'S case.
Sentenced to 7 years imprisonment.

the Mohurrir of the Thana, before whom he again confessed the murder, assigning as the cause that his wife had committed adultery with Rajnarain. The prisoner, in his confession before the Magistrate, stated, that he found his wife and Rajnarain sleeping together. On his trial, he had the appearance of an idiot; but from the evidence before the Court, and an examination of the officers in charge of the jail, and those who supplied daily food to the prisoners, as well as from the deposition of the native doctor, there was no reason to believe that Kalachand was insane at the period he committed the murder, or at any time previous to that act. The appearance of idiocy in the prisoner was noticed only after an attack of illness, on account of which he was removed to the hospital.

As the law officer considered that the prisoner was sane before and at the time of the murder, he pronounced a verdict of guilty, in which the Judge concurred: at the same time he observed, that Kalachand was not of sound mind, in his opinion, at the time of the trial.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicted the prisoner Kalachand of having killed his wife, by cutting her throat with a razor, after she had been committing adultery with a stranger, but at a time when the homicide was not justifiable in law; and declared him liable to discretionary punishment by *Seasut*, extending to death.

By the Court. C. Smith, (second Judge.) "I do not see sufficient reason to conclude that the prisoner was not sane at the time of his trial. He gave an answer to the charge, rational, and perfectly consistent with his preceding answers. In neither *futwa* is there the least hint of his being, or having been insane. Under all the circumstances of the case, a sentence of perpetual imprisonment strikes me to be more suitable than one of death."

J. Shakespear, (third Judge.) "The evidence in this case rests mainly upon the confession of the prisoner, and I think he should have the benefit of what can be urged in his favour from his own account of the transaction. Before the Magistrate, on the 9th of April, the prisoner states, that returning from the *bazar* to his house, on the 6th of April, he found a man named Rajnarain in bed with his wife; that he immediately ran to the house of Bicharam, (only one house distant from his own,) and seizing a razor, he returned, and killed his wife, Rajnarain having in the mean time absconded. The Darogha's report, dated the 8th of April, states, that the prisoner told the same story in the Moofussil. The evidence of Mussummaut Chundee goes to shew, that the prisoner suspected his wife one month before the occurrence. We have no evidence informing us what period of time elapsed between the prisoner seeing his wife in bed with Rajnarain, and the time of his committing the murder; but supposing the prisoner's story to be correct, and that he killed his wife under such circumstances, immediately with the first weapon he could lay his hands on, I should not be disposed to visit the offence otherwise than as a case of culpable homicide. As the evidence stands, I differ, therefore, from the 2d Judge, and think that a limited sentence of imprisonment only should be passed on

1823.
KALA-CHAND'S case.

the prisoner. I see no reason to doubt the sanity of the prisoner at the time of the act.

W. Dorin, (fourth Judge.) "There seems little doubt as to the prisoner's having put his wife to death. The only room for doubt is, what were the circumstances under which it was done. The Foujdaree confession implies that he found his wife in adultery with one Rajnarain, and in a rage went to a neighbour's house for a razor, with which he cut her throat. The Moofussil confession, and the report of it by the Darogha in his statement of the 8th of April, are not against this view of the act. Our *futwa* finds it so; but finds further, that under such circumstances the homicide was murder, as there was no commission of adultery at the moment. If there be a doubt regarding the case being not worse than as above found, viz. whether jealousy and not discovered adultery was the motive of the act, I think the accused should have the benefit of the doubt. Viewing the facts as taken in our *futwa*, I think we may consider it as culpable homicide only, the provocation being extreme. I propose seven years imprisonment, and do not think any plea of present or former aberration of mind, sufficiently clear to preclude punishment."

The third Judge concurring in the sentence above proposed of seven years imprisonment, it was issued accordingly.

MUSSUMMAUT LUKEE, *against* MOOKTARAM GHOSE.

Charge—MURDER.

1823.
Feb. 11th.
MOOKTARAM GHOSE'S case.

This trial came on at the 2d sessions of 1822, for zillah Hooghly, and the circumstances in proof were these. A stranger, named Bunsee Bagtee, arrived at the prisoner's house at night time, when it was raining hard; and enquired after a cow which he had lost. The prisoner asked the stranger into his house, gave him tobacco to smoke, and water to wash his feet, and went out himself to procure some rice to cook for his entertainment. On his return home, he found the stranger in the act of adultery with his wife. The prisoner brooded over his disgrace during the night. The first thing in the morning he heard was the voice of the stranger demanding his assistance in the recovery of his cow. The prisoner then taxed his wife with her misconduct; and she (instead of expressing her contrition) admitted the fact, and attempted to justify it; on which the prisoner seized a *dao* that was lying close by, and put her to death, by inflicting repeated blows with it on her head and neck. The above facts appeared from the confession of the prisoner when first apprehended, sitting by the corpse of his wife, and repeated by him on his trial.

The prisoner detected his wife in the act of adultery, and the next morning, on her attempting to justify her conduct, killed her in a fit of passion. Sentence, under all the circumstances of the case, imprisonment for life.

1823.
MOOKTARAM GHOSE'S case.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of the wilful murder of his wife, and in this verdict the Judge fully concurred.

The *futwa* of one of the law officers of the Nizamut Adawlut convicted the prisoner of the murder of his wife, and declared him liable to *Kissas* for the crime. By the Court. C. Smith, (second Judge.) "That the prisoner killed his wife, he has three times confessed; and the plea which he urges, even granting his statement to be true, is neither a legal justification, nor such as, without placing the life of every married native woman completely at the mercy and caprice of her husband, it would be impossible for this Court to admit. I am of opinion, therefore, that the prisoner should suffer death." The third Judge, J. Shakespear, observed, that he could not make up his mind to a sentence of death in this case. The fourth Judge, W. Dorin, likewise dissented, assuming as the facts of the case, that the prisoner's confessions were true, and that he killed his wife after having the night before discovered her in adultery with a stranger, and on angry words passing between him and his wife in the morning, regarding the act of infidelity. The Court, therefore, under the circumstances of the case, sentenced the prisoner Mooktaram Ghose to be confined for life with hard labour in the jail at Allipore.

1823.
Feb. 25th.
SOOKHOOA'S case.

GOVERNMENT,
against
SOOKHOOA.

Charge—SODOMY.

When the Judge of Circuit does not deem it necessary that public exposure should form any part of the punishment of a prisoner convicted of sodomy, he need not refer the case to the Nizamut Adawlut, if he agree with his law officer.

THE trial of Sookhooa for sodomy took place at the 2d sessions of 1822 for zillah Meerut. The case was simply as follows. On the 4th of March 1822, Hoolassee, a child, about 6 or 7 years of age, was playing; when the prisoner tempted him to the jungle by a promise of some leaves of the *peepul* tree; and there, by force, committed this unnatural crime. Before the acting joint Magistrate of Boolundshuhur the prisoner confessed the offence; and his confession having been proved, the law officer of the Court of Circuit declared him convicted, and liable to *Tazeer*. In this *futwa* the Judge concurred; and, in conformity to the order of the Nizamut Adawlut, dated the 3d October 1820, referred the trial for their final sentence.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner Sookhwa Chumar of forcibly committing sodomy upon the person of Hoolassee Chumar, a boy six years old; and declared him liable to severe *Acoobut* for the crime. By the Court. C. Smith, (second Judge.) "The case is abundantly proved, and I have awarded 25 *corahs*, and 10 years imprisonment with labour. There was no necessity for the reference of this case, if the Judge of Circuit thought the punishment which he could award sufficient. The order of the

3d October 1820* was but the opinion of a single Judge of this Court." The following sentence was accordingly issued, (present C. Smith.) "The Court, concurring in the *futwa*, sentence the prisoner Sookhooa to receive twenty-five lashes of the *corah*, and to be imprisoned for the term of ten years from the present date with hard labour. The Court observe, for the Judge of Circuit's information and guidance, that there is no Regulation which makes a sentence of *Tushheer* necessary on proof of this offence, nor any which prescribes the reference of such cases, where the Judge of Circuit may deem the punishment which it is within his competence to award sufficient."

1823. SOOKHOOA'S case.

CASHEERAM, *against* CHUNDEEDEEN.

1823. March 6th. CHUNDEEDEEN'S case.

Charge—WOUNDING.

THE prisoner Chundeedeen was charged with wounding the prosecutor with a sword, and tried for that offence at the 1st sessions of 1823, for zillah Hameerpore. It appeared from the proceedings held on this trial, that Casheeram, Brahmin, the prosecutor, held fifty-one beeghs of land in village Deogaon, which had been disputed by a Rajpoot named Pershadee, brother-in-law of the prisoner Chundeedeen, the plaintiff having obtained a decree in the Kalpee Court in his favour. Not satisfied with this decision, Pershadee still continued to resist the right of Casheeram, which had received the sanction of a court of justice. The latter offered to refer the dispute to a *Punchayut*; but even this conciliatory step would not satisfy the violent disposition and revenge of Pershadee, who with a few of his relations, watched an opportunity, when Casheeram was in a street alone, fell upon him with swords, and wounded him in the back and hand. With the finger of his right hand cut off, he rushed into the house of a neighbour, who from the upper story beheld the prisoner Chundeedeen make two cuts at him with a sword, and wound him near the ear. The witness then made such a noise as alarmed the neighbours, which caused the assailant to leave the prosecutor alive, but not before he had received many wounds. The above facts rested solely upon the deposition of the prosecutor, supported by the evidence of Khurug, near and in whose house the transaction occurred. The prisoner denied that he wounded the prosecutor, but acknowledged that he saw Pershadee do so, and that he stood by a well, distant two beegahs, at the time empty handed. He called two witnesses to support.

In a case of wounding, the *futwa* declared the prisoner not convicted, by reason of there being only one witness (besides the prosecutor) to the charge. The Court, seeing no reason to discredit the evidence, superseded the *futwa*, under section 4, Regulation XVII. 1817, and sentenced the prisoner to seven years imprisonment.

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* For the order alluded to, see page 50.

1823.
CHUNDEE-DEEN'S case.

port his defence; but these both denied any knowledge of the transaction or of the prisoner, during the time the assault happened, and deposed that they were in their fields.

The *futwa* of the law officer of the Court of Circuit declared the charge not proved, by reason of there being only one witness adduced in support of it. On consideration of the whole of the circumstances adduced, the Judge of Circuit was of opinion, that the charge was satisfactorily proved, and that Chundeedeen was guilty of "assaulting the prosecutor Casheeram, and wounding him with a sword;" and that under Regulation XVII. 1817, section 4, the prisoner should be sentenced to the punishment due to that crime. He added, moreover, that should the Court not agree with him as to the propriety of dispensing with the *futwa* in the case, he had further to suggest, that the prisoner should be punished as "accessary to wounding;" for he acknowledged, that he stood by and saw Pershadee wound the prosecutor, though he did not even pretend that he endeavoured to prevent him, or to raise the neighbours, and he was not a resident of that place, not did he account for being there at the time. He might, therefore, be considered to have stood by aiding and abetting Pershadee.

The *futwa* of the law officers of the Nizamut Adawlut was similar in purport to that of the Court of Circuit. By the Court of Nizamut Adawlut. C. Smith, (second Judge.) "Khurug, who is a Rajpoot, seems to have no such connexion with the prosecutor, who is a Bramin, as can throw any suspicion upon his evidence. He appears to have been made an involuntary witness in the affair, by the circumstance of the prosecutor's taking refuge in his house when he was attacked by Chundeedeen and others in the street. His deposition, corroborating that of the prosecutor, seems to me satisfactorily to bring home the charge to the prisoner. I propose, therefore, that we supersede the *futwa*, under section 4, Regulation XVII. 1817, and sentence the prisoner to seven years imprisonment with labour in the Humeerpore jail." The third Judge (J. Shakespear) fully coinciding in the above opinion, the Court superseded the *futwa* of the law officers, under section 4, Regulation XVII. 1817, and sentenced the prisoner Chundeedeen to be imprisoned with hard labour in the jail of Humeerpore for the term of seven years.

1823.
Mar. 12th.
RAMDIAL'S case.

KADAREE,
against
RAMDIAL.

Charge—MURDER and WOUNDING.

On a charge of murder and wounding, the law officers acquit of the wounding on the ground of there being no prosecutor, and the Court observed that it would have been more regular, had the Vakeel of Government, in the absence of the wounded individuals, been constituted prosecutor. In the present instance, however, it was immaterial, the prisoner having been sentenced capitally on the charge of murder.

THE trial of the prisoner Ramdial, for murder and wounding in the town of Bareilly, came on at the monthly sessions, for that town, of October, 1822.

The particulars of this case were as follow. On the evening of the 4th of October last, a little before sunset, Birjlal being seated in his shop in Gunge Allum Geeree, with his two sons Kadaree and Sumbhoonaut, examining some chintz, the prisoner was observed to come from the eastern end of the gunge, and having passed a few paces beyond Birjlal to the westward, he suddenly turned back, drew his sword, and, without exchanging a word, struck Birjlal such a blow as caused instant death, having cut his body nearly half through. Sumbhoonaut calling out, he also wounded him. Kadaree saved himself by retreating into the closet at the back of the shop, and closing the doors. The prisoner then proceeded to the eastward with hasty steps, having a drawn sword in his hand, and having reached the shop of one Jassoo, wounded Ramdeen, and Bhugwan Das, the latter severely, and then wounded Fukeerchund and Oojany in an adjacent shop, and made his escape. The prisoner being well known as a servant belonging to Mr. Fanthome, immediately on the circumstances attending the murder, &c. being proclaimed, the police Burkundauzes and Sowars surrounded Mr. Fanthome's house, which was situated in a garden walled all round, from one third to half a mile from Gunge Allum Geeree; and on Mr. Fanthome's returning home at 10 o'clock at night, the prisoner was delivered up to the *Kotwal*. The evidence in support of the charge against the prisoner was clear and direct. Kadaree, the prosecutor, deposed with little variation, that he saw the prisoner first strike his father, and then his brother Sumbhoonaut, with a drawn sword, on which he retreated into the closet, and closed the doors. He also described the kind of sword and sheath which the prisoner had in his hand, as well as his dress. Sumbhoonaut, the eldest son of Birjlal, deposed much to the same effect, with, however, the addition of having been wounded on the right arm by one Bhujjan, after that the prisoner Ramdial had wounded him.

The witness Rungee Lal deposed, that whilst he was sitting in his shop ten paces from Birjlal, he saw the prisoner pass Birjlal a few steps, and then turn back, and first wound Birjlal, and secondly Sumbhoonaut. This witness, on seeing the prosecutor retreat into his closet, fled for his own safety. The witness Khooshamud, whose shop is 17 or 18 paces to the west of Birjlal's, and on the same side of the road, was sitting in his shop, when he saw the prisoner Ramdial go up to Birjlal, and wound him, and then wound Sumbhoonaut. This witness stated, that he had a full view of the prisoner's face at the time he was wounding Birjlal. He also

1823.
RAMDIAL'S case.

described his clothes, and stated that he retreated towards the east with hasty steps and a drawn sword in his hand. The witness Bhola deposed, that he was sitting close under Birjlal's shop selling pawn, when hearing a blow given, he looked up, and saw the prisoner Ramdial coming out of Birjlal's shop with a drawn sword in one hand, and a red scabbard in the other. At that time he did not see the prisoner's face, but running through fear into a street to the south, he saw the prisoner's face as he passed by it to the eastward. Khyroo, a servant of Jeewun Ram, deposed, that having been in the bazar endeavouring to cheapen some cloths, when returning towards his master's shop on the 4th of October last, having reached within ten paces of Birjlal's shop, which was to the eastward of him, he saw the prisoner Ramdial run from Birjlal's shop to the eastward with a drawn sword in his hand. This witness stated, that he had an opportunity of seeing his face as he turned round. His attention was attracted to Birjlal's shop by Sumbhoonaut calling out that they had killed his father; and going on to the shop, he found Birjlal murdered, and Sumbhoonaut wounded, after which he heard that four other persons had been wounded. The witness Ramsook deposed, that he was sitting in his master's (Rungeelal's) shop purchasing cloths, when he saw the prisoner Ramdial, Bhujjoo, and another person go to Birjlal's house, when Ramdial wounded Birjlal and Sumbhoonaut. This witness was brother-in-law of the prisoner Ramdial, and endeavoured to suppress the circumstance of his having seen the prisoner make use of his sword. It appeared, that after the prisoner had murdered Birjlal and wounded Sumbhoonaut, he proceeded in great haste with his drawn sword to the shop of Jassoo, which is situated on the opposite side of the road, and sixty-five paces to the eastward of Birjlal's. Jassoo deposed, that he was sitting in his own shop with Ramdhun and Bhugwan Das, when the prisoner, coming hastily up with a drawn sword, the sheath of which was red, struck a blow which hit the wooden pillar of the shop, on which the witness retreated inwards; but on the prisoner's striking again, and wounding Ramdhun and Bhugwan, the witness made his escape. The witness Ramdhun, the son of Jewun Ram, deposed to the same effect as Jassoo: but stated, that the blow which struck on the wooden pillar, glanced off, and wounded him. Bhugwan, whose deposition was taken by the *Kotwal*, deposed much to the same effect. This person was too ill from the effects of his wounds to attend on the Court, and there was small hope of his surviving. The witness Fukeerchund deposed, that whilst sitting in his shop, the prisoner coming up, first wounded him, and then wounded Oojanee Bramin who was sitting with him. The witness supposed the prisoner was induced to attack him, because he was Jewun Ram's partner. Oojanee deposed, that whilst sitting in Fukeerchund's shop, he saw the prisoner first make to Jassoo's shop, and wound people there, and instantly after come to Fukeerchund's, and wound that person. On his (Oojanee's) calling out, "I am a Bramin," he replied, that he had come purposely to kill him, and wounding him on the arm, went on towards the east with

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a drawn sword in his hand. No evidence was obtained regarding the prisoner's proceedings after quitting Fukeerchund's shop; but as the prisoner was well known by all the foregoing witnesses, he was instantly accused, and parties of the police proceeded to Mr. Fanthome's house for the purpose of apprehending him. It appeared, that Mr. Fanthome was from home at the time, and as the house was in a garden surrounded by a wall, the *Kotwal* delayed forcing an entrance, but sent to the Magistrate for instructions; and by the time orders had arrived to seize the prisoner wherever he might be, Mr. Fanthome returned home, and finding Ramdial in his verandah, made him over to the *Kotwal*. The sword used by the prisoner was represented by the witnesses as being of that kind called *Kanda*, and the sheath covered with red cloth. The *Kotwal*, hearing that the prisoner had purchased a sword of that description, sent his Naib to Mr. Fanthome's the day after the prisoner's apprehension, to demand it, who received for answer, that he (Mr. Fanthome) knew nothing of it, but would ask his sirdar bearer when he returned from dinner. The next day the sword produced in Court (which answered in every respect to the description previously given of the sword used by the prisoner) was sent by Mr. Fanthome to the *Kotwallee*. The sword was of an uncommon form, being very long, and straight, and broad towards the point: it appeared to be made of excellent material, and was a little bent, as if by violent usage. Where, and how the sword was found by the sirdar bearer, did not satisfactorily appear, as that person, having left his master's service, had quitted that part of the country.

A complaint preferred by Jewun Ram against the prisoner Ramdial, which was made on the 10th of June 1822, appeared to have been the cause of the murder and woundings. That complaint had been referred to a *Punchayt* for arbitration, and Birjlal was selected as one of the arbitrators by Jewun Ram, and appeared to have been strenuous in enforcing the penalty, which was, that Ramdial should bow his head down to Jewun Ram's feet. On the 22d of August, Birjlal presented a petition to the officiating Magistrate, charging the prisoner Ramdial with having drawn his sword upon him, and with great abuse threatened his life. This being made over to the Sudder Ameen, an order was passed on the 29th of August, that Ramdial should enter into a recognizance of 20 rupees, and Bhujjun his associate in one of 10 rupees, not to molest Birjlal in future. Against this decision Ramdial made a violent protest in the shape of a petition to the Magistrate, dated the 19th of September.

The prisoner rested his defence upon an *alibi*, and gave in a long list of witnesses to prove it. His deposition at the *Kotwallee*, which was proved before the Court of Circuit, was however at variance with it, to falsify which he named witnesses, whose depositions were taken. The evidence given by Barnard Fanthome, Joseph Bantard, and John Mathews, did not prove the *alibi*, considering the time at which the murder was perpetrated, and that half an hour was ample time for any person to go to Birjlal's house from Mr. Fanthome's, and to return therefrom. The evidence of the other witnesses to the *alibi*,

1823. RAMDIAL'S case.

the Judge of Circuit did not consider worthy of any credit, as they differed one with another, as to the place where the prisoner remained, and as to the manner in which he was employed.

The law officer of the Court of Circuit convicted the prioner Ramdial of the wilful murder of Birjlal, as also of wounding Sumbhoonaut, and declared him liable to suffer death by *Kissas*. In this *futwa* the Judge concurred, neither was he aware of any circumstance which could be urged in mitigation of punishment.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of the wilful murder of Birjlal Khetree, and declared him liable to *Kissas* for the crime. With regard to the charge of wounding others, the law officers declined giving any *futwa*, as no one had prosecuted upon that charge.

The Court, (present W. Leycester and C. Smith,) concurring in the *futwa* of murder against the prisoner, and seeing no circumstances in his favour, sentenced him to suffer death. The Court observed, that to complete the proceedings on the trial, the Magistrate or the Judge of Circuit should have ordered the pleader of Government to prosecute the prisoner on the charge of wounding Sumbhoonaut and others; but the prisoner having been capitally sentenced for the murder, it was unnecessary to give any instructions for supplying this defect.

1823. Mar. 12th. Case of AMAUN ALI & LAL MOOHUMMUD.

SHEO LAL, MOKHTAR OF DR. YELD,
against
AMAUN ALI and LAL MOOHUMMUD.

Charge—FORGERY, and PRESENTING FORGED RECEIPTS.

The regulations prescribe no *minimum* of punishment for the offence of uttering forgeries, and a reference for mitigation was made under the misapprehension that there was such *minimum*. But the Court of

THIS trial came on at the Benares monthly sessions for December, 1822.

The object of the reference was to procure a mitigation of the sentence awarded, in conformity with clause 2, section 9, Regulation XVII. 1817, against the prisoner Lal Moohummud, who was convicted of having assisted the other prisoner in fraudulently receiving money, in presenting (while his servant) receipts bearing the seal of a person deceased, for a pension granted to the deceased during life. The person to whom the pension was granted (by an officer killed in battle with the Rohillas) died, it appeared, about four years before; notwithstanding which, the prisoner Amaun Ali continued to send receipts sealed with the seal of the deceased, and to draw the pension from a gentleman (Dr. Yeld) residing at Benares. Allowances were, in the opinion of the Judge of Circuit, to be made for the situation of the prisoner Lal Moohummud; and considering the part he took in the transaction, he was of opinion, that his offence would be sufficiently visited, and the ends of justice also accomplished, by awarding one, or at most two years imprisonment.

1823.

Case of AMAUN ALI & LAL MOOHUMMUD.

The *futwa* of one of the law officers of the Nizamut Adawlut convicted the prisoner Amaun Ali of forging receipts, and the prisoner Lal Moohummud of issuing such receipts, and receiving money upon them, though he knew the pensioner whose name they bore to be dead, and the receipts to be forged, and declared both the prisoners to be liable to discretionary punishment by *Acoobut*.

Nizamut Adawlut, nevertheless, not deeming the person convicted a fit object for mitigation, confirmed the sentence.

By the Court, present J. Shakespear, (third Judge.) "The first prisoner is charged with forgery, and fraudulently receiving a pension of 50 rupees, granted during the lifetime of Shums oonissa Begum, and the second with knowingly presenting forged receipts, after the demise of the Begum, and receiving the money for the first. I think the charge is established against the first, but I do not think it is proved that the second, who received the money, knew that he was acting fraudulently in so doing. I propose, therefore, that instead of mitigating the punishment to which the second has been sentenced by the Judge of Circuit, as recommended in the letter accompanying the trial, we acquit him (Lal Moohummud), and confirm the sentence passed on Amaun Ali."

C. Smith, (second Judge.) "The examinations in the Court of Circuit are rather superficial; but taking the Foujdarry and Court of Circuit proceedings together, I conceive Lal Moohummud and Amaun Ali to have acted in concert throughout. Lal Moohummud therefore, not only for four years drew as for Shums oonissa, a sum of 50 rupees a month, though he knew the pensioner to be dead, but was aiding in the fraud attempted by Amaun Ali, of passing off an old woman for Shums oonissa upon Dr. Yeld. I see therefore no ground either for acquittal or for mitigation."

W. Dorin, (fourth Judge.) "I concur in the convictions of Amaun for forgery, and of Lal Moohummud for uttering the forgery, and in the sentence proposed by the second Judge. It is observable, that for the offence of uttering forgery, the Circuit Judge could have himself mitigated below three years. Section 10, Regulation XVII. 1817, for *uttering*, only prescribes a sentence not exceeding seven years."

Under these circumstances, the Court, concurring in the *futwa*, and being of opinion, that the prisoners were convicted, upon satisfactory evidence, of having carried on in concert a deliberate fraud and forgery for four years, did not see any ground for granting the mitigation applied for by the Judge of Circuit in behalf of Lal Moohummud, and did not think fit to make any alteration in the sentence passed by the Judge of Circuit on the 7th of January, which sentence was accordingly confirmed.

1823.
Mar. 31st.
DEGUMBER PANDE'S case.

GOVERNMENT,
against
DEGUMBER PANDE.

Charge—MURDER.

Case of a woman who burnt herself with the corpse of her brother. Her father, who chiefly assisted at the sacrifice, sentenced to 7 years imprisonment.

THE prisoner was charged with the wilful murder of Mussummaut Acharjea, his own daughter, by assisting at her cremation, and was tried for that offence at the 2d sessions of 1822, for zillah Gorukhpore. The facts of this case, as they appeared in evidence, were briefly as follow.

The prisoner's son died at his (the prisoner's) house. His widow, who was at Chuprah, burnt herself with his turban, sent to her for the purpose; and his sister (the daughter of the prisoner) insisting upon burning also, a pile was prepared and fired by her own father. In his defence, the prisoner, admitting that he had set fire to the pile on which his daughter was burnt, pleaded, that he had done all in his power to dissuade her from her purpose, but in vain; that he only consented to be instrumental to her destruction, on her imprecating the wrath of heaven on his head, in the event of his continuing to oppose her wishes. This defence was fully substantiated by the evidence adduced.

In submitting this case to the Nizamut Adawlut, the Judge of Circuit observed: "How far the impulse to this act may plead with the Court, I know not: for myself, I do not admit what nature and (thus practised) the law of the land both equally declare against, as an admissible plea in mitigation of what the prisoner has rendered himself liable to." The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Degumber Pandey of having burnt his living daughter Acharjea with the dead body of her brother Jugmohun Pandey, declared, that by the circumstances of the prisoner being Acharjea's father, and his having burnt her at her own request, *Kissas* and *Deeut* were barred, and the prisoner was liable to *Acoobut*, for having, without compulsion, perpetrated an evil act in spite of the proclaimed prohibition of the ruling power. By the Court. C. Smith, (second Judge.) "There is not a shadow of proof of violence; the suicide seems to have been quite voluntary, and all that the prisoner, who is clear of all imputation of malice, can be justly liable to, is the punishment of having assisted a self-destroyer in the act of self-destruction. It would appear, from the answer of our pundits, that the prisoner, according to the law of his own persuasion, is chargeable only with a slight offence. I would not treat it as a slight offence, still less would I consider it as wilful murder, of which it in truth possesses not one single feature. I am of opinion, that the prisoner should be imprisoned for seven years without labour in the zillah jail; and from the peculiarity of the case, and the ambiguous style in which the Judge of Circuit has communicated his own opinion, I have deemed it necessary to let it lie over for another Judge."

1823.

DEGUMBER PANDE'S case.

W. Dorin, (fourth Judge.) "I agree to the sentence of 7 years imprisonment proposed by the 2d Judge. There seems nothing in the case which can justify its being treated as murder; and on the other hand, we must punish the act with a view to prevent repetition. Viewed as a *suttee*, it was an illegal one. The prisoner, in setting fire to the pile, seems to have acted under terror of his daughter's curse. It is in evidence, that he, as well as others, tried to dissuade her from the act of self-immolation, in which his part was that of an assistant. The whole of the village seems to have been looking on. The answer of the Pundits is a good specimen of their absolutely nonsensical ideas on the subject of criminal law*. It is observable,

* The following is a translation of the Sanscrit legal exposition in question. "It appears, from the testimony of all the witnesses, as well as by the acknowledgment of Degumber Pande, that Acharjea with her own free will was determined to burn herself with the corpse of her late brother, notwithstanding she was repeatedly dissuaded by her father (the said Degumber) and the other attendants, and that she imprecated curses on those individuals who opposed her in this act. The father, by reason of her perseverance, supplied some wood and fire, and she unassisted, ascended the pile. Although it is not allowable, and indeed is contrary to law and usage for a sister to sacrifice her life by burning her body on the funeral pile of her brother; yet it must be presumed that she, in some former stage of existence, did some act, the effect of which was to impress her with an irresistible belief that burning with her deceased brother was the only means of salvation in the next world, or that the excessive love for her brother caused her to form a violent resolution to burn herself on her brother's pile, and to curse those who attempted to dissuade her from her purpose. In default of a nearer heir of the deceased to set fire to his pile, the performance of his exequial rites is obligatory on the father; and from the fact of his having supplied wood and fire, he (the said Degumber) cannot be considered as a murderer. By the same act of the father which completed his son's funeral ceremony, the daughter died; but it does not follow that the father is an offender, in as much as he neither killed her, nor advised her to sacrifice her life, nor assisted her in her self-sacrifice, she having voluntarily ascended the pile. It is related in the *Pooranas*, that a great many *Moonees*, or holy saints, and other individuals, have sacrificed their lives by diving into deep waters, and falling into fire, &c.; and their pupils, sons, and others assisted them in those acts, for which assistance, however, no sin is stated to have attached to them: and it is well known that both men and women are still in the habit of performing the rite of *Jalasumadhi*, or sacrificing life, by entering into water at *Prayaga* and other places; and in compliance with their requisitions, the individuals who bring boats, (to carry them into the middle of the stream, and throw them there,) and who tie water-pots or other things to their necks, &c. incur no sin, by the universal consent of the learned. The father, by reason of the insufferable anguish which he endured for his son's death, and also for the daughter's determination of sacrificing her life, may have lost his natural senses; consequently he cannot be held to have incurred the guilt of a murderer, or liable to suffer any punishment by the ruling power. Fathers, generally speaking, on the death of their issue, lose the power of discriminating between what acts are lawful and what unlawful, as may be ascertained on reference to the lives of Vasistha and others, which are well known. The father, however, is blameable in a slight degree for the assistance he gave his daughter, who committed an act which is contrary to the doctrines of law, and to the general practice; he, therefore, must perform three *Prajaputyas**.

* *Prajaputya* is a sort of penance, which consists in eating once a day, for three days in the morning, once in the night for three days, subsisting three days on food given as alms, and fasting three days more.

1823. DECUMBER PANDE'S case.

that section 3, Regulation VIII. 1799, directs a sentence of death, in cases where one puts to death another at the desire of the sufferer, only in the event of the Nizamut Adawlut seeing no circumstances in the case to call for mercy."

The prisoner was accordingly sentenced, under the circumstances of the case, to seven years imprisonment without labour in the jail of zillah Gorukhpore.

1823. April 12th. Case of PURTAB MOHRA and SOOKHRAM.

Held by a majority of the Court of Nizamut Adawlut, that the proclamation prescribed in Regulation IX. 1808, does not apply to a case of robbery and murder, originating in a private feud, where plunder was not the primary object of the offend-

GOVERNMENT, *against* PURTAB, MOHRA, and SOOKHRAM.

Charge—MURDER and CONTUMACY.

THE trial of the prisoners above named came on at the 2d sessions of 1821, for Boolund Shuhur. They were charged with the murder of Rutna on the highway, of Golab and Dulla, Rutna's brothers, in the fields close to the village of Chuppeana, and of Oodyram, Rutna's son, in the village itself, on the 6th of August 1816. It appeared from the Magistrate's proceedings, that endeavours had been made to apprehend the perpetrators of these murders unsuccessfully, but not without considerable zeal and exertion, ever since the case was first reported. The Magistrate had issued a proclamation at once offering rewards for their apprehension; and under Regulation IX. of 1808, the prisoners were proclaimed, and a reward promulgated of 100 rupees for the apprehension of each of them. On the 10th of May 1821, the joint Magistrate received a report from the Thanadar of Suraisudder, that he had apprehended, in the village of Chuppeana, the prisoners Purtab and Sookhram, and the prisoner Mohra in Raispoor; that the persons of three prisoners had been identified by the prosecutor Hurjus, son of Rutna deceased. Another prisoner proclaimed, Shera, since deceased in jail, was afterwards, on the November following, apprehended through the agency of the Darogha of Boolund Shuhur. The rewards proclaimed under the Regulation

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AUTHORITIES.

"It is declared in the *Muhabharatha*, that the rajah Runtideva, in compliance with the solicitation made by a great many cows who wished to abide in the *Goloke*, killed cows for the use of sacrifice."

"In this world, at the beginning of the *Kali* or present age, a learned man named Bhatta Pradacharjya, resolved to sacrifice his life at *Prayaga*, by burning his body with the fire of dry cow-dung for the period of forty days, and his pupils assisted him in that ceremony."

"*Vasistha*, who is most excellent among holy saints, having been grieved for his son's death, fell down from the mountain, plunged into the ocean, and also having caused his limbs to be bound by others, fell into the river *Suruswati*."

"This is recorded in all the *Pooranas*."

"It is said by the learned, that there is no such happiness, and no such misery, as that which arises by the birth and death of a son."

1823.

Case of PURTAB MOHRA and SOOKHRAM.

were paid to the persons who apprehended the offenders; but the remaining criminal, named Toolsy, was not taken. The case was regularly taken up, witnesses heard, and the Magistrate's investigation concluded with the commitment of four persons, one since dead for trial before the Court of Circuit. It appeared, upon the trial before the Court of Circuit, from the positive testimony of the eye-witnesses, Musst. Jykour, Gunga, Dhumoo, and a man named Mojeea, confirmed by evidence to the appearance of the body, and the Thanadar's report at the time, that as the deceased Rutna was returning in company with some of the witnesses, and had arrived half way between the town of Ghazeeabad and his own residence at Chuppeana, he was set upon and slain with swords and spears, (one of the assistants having only a club,) by Mohra, Purtab, Sookhram, Shera (deceased), and Toolsy (not apprehended). It appeared, also, on the trial by the evidence of the eye-witnesses Mowashee, Futta, Mahdaree and Seroo, that the same party assaulted the deceased Dulla in the fields, and after the prisoner Mohra's striking him with an iron bound club, the whole party despatched him with swords and spears; that the same party immediately afterwards assaulted and put to death the deceased Goolba in the next field; that the deceased Oodyram fled for his life, in presence of the witnesses, towards the village, pursued by the murderers. The dead body of Oodyram was found in the village; and it appeared from the report of the Darogha, that a severe wound had been inflicted on the head, a spear thrust into the body, which passed out quite through at the back, and both the hands were cut off. These murders appeared to have been perpetrated with the utmost deliberation. The assassins immediately plundered the village of Chuppeana, and absconded: no distinct or very intelligible cause of such deadly hostility between the deceased and the opposite party appeared on the proceedings. Some witnesses referred to the jealousy entertained by the offenders against Rutna and his family, for the superior degree of consequence assumed by them in managing the concerns of the village. The prosecutor narrated a transaction concerning the removal of the murderers to cultivate at a village called Nasirpoor, in consequence of a disagreement with the deceased Rutna and others, who had made some arrangement respecting the letting of the village in farm to a person named Neamut Khan, which was not agreeable to the opposite party. These latter wished to prevail upon the other inhabitants to secede also, and in consequence of non-compliance on the part of a Chumar named Bullooah, they drove his cattle away. A *punchayut* assembled, and resolved that the murderers should restore the cattle. This they resisted: Rutna and his friends were preparing to go and complain at Meerut; but when their intention became known, they were shortly after slain by the persons above named.

ers; but held, nevertheless, that proclamation having been issued, the prisoners were entitled to the benefit of the old rule in the Regulation above cited, by which they were exempted from a capital sentence, and declared liable only to the penalty for contumacy.

The Judge of Circuit had no doubt of the guilt of all the persons named. He recommended that they should be executed, and their bodies hung in chains on the spot where the murders were perpetrated.

On weighing the proceedings, however, in this trial, the chief Judge of the Nizamut Adwlut (W. Leycester) recorded the following or-

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der. "The Court observe, that the three prisoners brought to trial in this case were, under the provisions of Regulation IX. of 1808, proclaimed by the orders of the Nizamut Adawlut, under date the 23d January 1817, and that the 7th and 8th sections of that Regulation prescribe the course to be pursued by the Magistrate and Circuit Judges, in the commitment and trial of any prisoner who may have been guilty of contumacy in not attending within the period prescribed by the proclamation. On the present occasion, this prescribed course has not been pursued, but the prisoners have been tried under the original charge, to which, under the 5th section of the above Regulation, they would only have been liable, if they had appeared before the Magistrate, or been apprehended, within the period limited in the proclamation; whereas, in the present case, which seems to involve no question of their appearance within the limited period, the prisoners, under the 10th section of the said Regulation, were only liable to be brought to trial on a specific charge of any other crime, not being that for which they had been proclaimed. The Court accordingly direct, that the prisoners be placed on their trial for contumacy under the above section." In compliance with this order, the prisoners were brought to trial for the offence of contumacy at the second sessions of 1822. The identity of two of the prisoners, Purtab and Mohra, and the due publication of the proclamation having been proved, the law officer of the Court of Circuit declared the prisoners convicted of contumacy; and the Circuit Judge, under section 8 of Regulation IX. 1808, passed sentence, adjudging each to be imprisoned and transported for life; subject to the confirmation of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut acquitted the prisoners Mohra and Purtab of the offence with which they were charged, and declared them entitled to their release.

By the Court. C. Smith, (second Judge.) "I agree with our *futwa*, not seeing upon the record of the trial sufficient evidence of the prisoner having distinctly known of the nature of the proclamation issued. I have great doubts, also, whether the case is one that properly falls within the intent of Regulation IX. 1808; and if it does not, the Nizamut Adawlut's order of the 6th February 1817 was illegal. Upon the trial for the original offence referred with the officiating Judge of Circuit's letter of the 29th of January 1822, I shall give my opinion separately. In that trial there were three prisoners, and all three were ordered, on the 7th of May 1822, to be brought to trial for the contumacy; yet, in the present reference, there are but two prisoners, nor can I find at all what has become of the third, Sookhram. It does not seem to me necessary that the trial for the original offence should be *de novo*. The former trial suffices."

W. Leycester, (chief Judge.) "I agree in the conviction for the contumacy, and would confirm the sentence passed by Mr. Elliott. No *futwa* ought to have been taken, as the prisoners are liable without trial. I consequently do not agree in our second Judge's proposed sentence for the crime of murder. They were not, under the Regulation, liable to be tried for it, as was ruled in many cases before this, and further confirmed by Regulation V. of 1822."

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J. Shakespear, (third Judge.) "The murders were obviously caused by a village feud between the prisoners and the deceased, who appear to have possessed a joint interest in a farm. The provisions of Regulation IX. of 1808, do not, therefore, in my opinion, apply; and I concur with the second Judge in holding the proclamation to have been irregular, and that the prisoner should consequently be discharged on this count."

W. B. Martin, (fifth Judge.) "It appears to me, that the charge of contumacy for which, under the Resolutions of the 7th of 1822, the prisoners Purtab and Mohra were brought to trial, has been satisfactorily proved against them, and that they should therefore suffer the punishment annexed to that offence by section 8, Regulation IX. 1808, viz. imprisonment for life. It seems to have been ruled by the Nizamut Adawlut, that persons who have been proclaimed under the provisions of that Regulation, must, in the event of their subsequent apprehension, be tried only for the offence of contumacy, even although the crime for the supposed commission of which they were originally proclaimed, may have been, as in the present case, that of an atrocious murder; meriting, if proved, a degree of punishment superior to that which they could be adjudged to suffer, if found guilty on the charge of contumacy. According to this construction, which the rules of Regulation V. 1822, are intended to set aside, the prisoners cannot, I conceive, be sentenced to suffer death for the deliberate murder of which they are, in my opinion, clearly proved to have been guilty. Although the third prisoner, Sookhram, was placed on his trial for murder, yet we have no account of him since that for contumacy."

W. Dorin, (fourth Judge.) "In this case, the Magistrate of Saharunpore, on the 8th of January 1817, recommended the proclamation of the accused, under Regulation IX. 1808, and they were proclaimed accordingly under that Regulation by the Nizamut Adawlut, (Harington, chief Judge, sitting singly,) and the order bearing date the 23d of the above month. The record recites, that they may be proclaimed under the above Regulation, as being charged with "murder and robbery by open violence." The Persian proceeding sent with the Magistrate's letter recites it to have been charged against them, that, besides the murders, they plundered the houses of the murdered. And on turning to the deposition of the prosecutor on the trial first held, I find he swears to his house having been plundered at the time; the murders having been first perpetrated. It is clear, perhaps, that the essence of the crime must have been murder from revenge; but still, if plunder accompanies it, it is brought within the definition of robbery by open violence laid down in Regulation LIII. 1803, and the proclamation under Regulation IX. 1808, cannot be called illegal, however unadvisable it may have been. If there had been no plunder charged, but only murder, I should then have held the proclamation wrong, and all proceedings arising from it void. But as the case stands, I think the proclamation must be held good. The accused, therefore, must, in my view, have the benefit of the law, as it existed (according to the construction of this Court) be-

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fore Regulation V. 1822, and which, supposing them convicted of the contumacy, subjected them to sentence (without trial) on the charge which caused their proclamation, such sentence, however, not being beyond transportation for life. Should the accused be acquitted of the contumacy, they may then be tried for the main offence ; but it may be useless (under the difference of opinion which exists) for me to take up the case of contumacy, before the remaining member of the Court has given an opinion on the whole question. I have gone through the trial for contumacy, and think the prisoners convicted. The plea of ignorance of the proclamation, supposing it were true, could not be listened to."

C. Smith, (second Judge,) and J. Shakespear, (third Judge.) " The third Judge and myself have distinctly recorded our opinion, that the order of the 6th February 1817, which, was passed by Mr. Harington, sitting singly, ought not to have been passed, the case not being of the nature of those cases which were contemplated by Regulation IX. 1808. The 4th Judge has distinctly said, that he thinks the proclamation, however unadvisable it may have been, was not illegal. In the remarks recorded by the 1st and 5th Judges, this point does not appear to be touched on ; and it seems to me essential, that before the 4th Judge takes up the case, the 1st and 5th Judges should supply this omission. To the best of my recollection, applications from the Magistrates have been more than once rejected, upon the ground of the inapplicability of the Regulation, and that where there has been plundering charged as well as murder, it was thought that murder and plundering, which occurred in a private feud, could not be brought within a rule which clearly was intended only for robbery by open violence committed for the sake of the property of those attacked. Unless the first and fifth Judge concur, and express their concurrence with the fourth, in considering the proclamation to have been legal, (by which I mean to have been consonant to the intent as well as the letter of Regulation IX. 1808,) I do not see how the trial upon the charge of contumacy can possibly be upheld."

Agreeably to the majority of opinions, the following sentence was proposed to be issued by Messrs. Leycester, Dorin, and Martin. " The *futwa* of two of the law officers of the Nizamut Adawlut declares the prisoners Mohra, son of Sobba, and Purtab, son of Sobba, not convicted of the contumacy charged against them, in not appearing within the period of a proclamation issued against them, under Regulation IX. 1808, by order of the Nizamut Adawlut, requiring them to appear and answer to a charge of murder and robbery. The Court dissent from the *futwa*, and under Regulation XVII. 1817, deeming the prisoners duly convicted of the contumacy charged, confirm the sentence of transportation for life, with imprisonment and hard labour, passed on the said Mohra and Purtab, by the Circuit Judge." At this stage of the proceedings, the second Judge recorded the following Minute. " As it does not appear that the remarks recorded on the 5th instant by the 2d and 3d Judges, and sent on that date to the 4th Judge, have been seen by the 1st and 5th Judges, the Register is

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requested to shew those remarks to the 1st and 5th Judges before they sign the sentence which has been drafted by the 4th Judge, and to record the fact of the remarks having been so shewn; this appearing to me essential to make the proceedings in the case correct and complete." To this the chief Judge replied. "How a case of robbery by open violence ceases to be such, because the prisoners were actuated by deadly revenge also, we are not told, nor can I conceive; nor would such argument have been held, if the wounded persons had survived, which if no permanent injury had been sustained, would, in the spirit of the argument, have subjected the prisoners to *Hookoomt i adl*, or expenses of cure. I will go a stage further, and add, that, if it had been murder only, I would equally have stopped short of a capital sentence. We are not to entrap a man into the belief that his life is secured: and the prisoner has a clear title to the benefit of any such error." The fifth Judge observed: "Although I do not think that the proclamation was consistent with the spirit and intent of Regulation IX. 1808, yet as the prisoners have been tried for contumacy under that Regulation, by an express order of the Nizamut Adawlut, I am of opinion that they cannot now be sentenced to any greater severity of punishment than is authorized by the provisions of it." The second Judge rejoined. "In the remarks dated the 5th of April, and subscribed by the 3d Judge and myself, it was observed, that unless the 1st and 5th Judges concurred with the 4th, in thinking the proclamation in this case agreeable to the intent of Regulation IX. 1808, we did not see how the trial upon the charge of contumacy could be upheld. Now that the 1st and 5th Judges have recorded their opinion, it appears that the latter does not think that the proclamation was consistent with the spirit and intent of the Regulation. There being, therefore, three Judges of this opinion against two who think differently, I conceive that the trial for contumacy must be quashed, and the prisoners be sentenced under that for murder. To meet the difficulty suggested by the 5th Judge, I am willing, under the peculiar predicament in which the prisoners stand, to remit the capital sentence, and sentence them to perpetual imprisonment in the jail at Allipore. I beg that the signing of the sentence which has been drafted may be delayed till this proposition shall have been seen by the four other Judges." The chief and fifth Judge adhering to their opinion, the 2d Judge observed: "The object of the remark of the 5th of April having been answered, that is, the 1st and 5th Judges having recorded their opinions and the grounds of them, there can be no reason for further delay in issuing a sentence which three Judges out of five approve. My own opinion as to that sentence is what it was. It is more severe than that to which I proposed to sentence them in the other case*.

* Immediately on the receipt of the trial for the offence of contumacy, a *futwa* had been taken from the law officers as to the guilt or innocence of the

1823.
April 14th.
KHODABUKSH'S case.

KOORA,
against
KHODABUKSH.

Charge—MURDER.

A prisoner convicted of murder, and sentenced to

KHODABUKSH KHAN was tried for the murder of Illahee Buksh (*alias* Bukshoo), and the following is a brief outline of the case, as it appeared in evidence on the trial, which came on at the 2d sessions of 1822 for zillah Seharunpore. On the 24th of August, 1822, while Illahee Buksh was easing himself, at a few paces from his house, the prisoner came behind him, and inflicted on him a wound with a

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prisoners on the charge of murder; and they were pronounced guilty, and liable to death by *Seasut* for the crime. The second Judge observed: "The positive evidence upon the trial, corroborated by the circumstance of the long abscondment of the prisoners, seems to me quite sufficient to support the *futwa* of conviction; and taking the facts charged as proved, it is perfectly clear, that nothing short of a capital sentence can satisfy the justice of the case. I am of opinion, that all the three prisoners should be adjudged to suffer death. (See the trial of two of them under Regulation IX. 1808, recently referred by the 3d Judge of the Bareilly Court of Circuit.) It does not appear to me to be any objection to this trial, that it preceded the trial for contumacy. Regulation V. 1822, is too recent to bear upon this case." The third Judge concurred in this view of the case, but added the following observations. "I think we had better call in another Judge in this case, before we proceed to pass a capital sentence. The Magistrate was authorized by Mr. Harington, when senior Judge of the Nizamut Adawlut, to issue a proclamation against the prisoners under the provisions of Regulation IX. 1808. The accused having been apprehended, have been tried by the Court of Circuit, both for the contumacy and the murders. The senior Judge, Mr. Leycester, convicts of the contumacy, and proposes to sentence to imprisonment for life. The 2d Judge agrees with our law officer in acquitting of the contumacy, on the ground that it is not proved that the prisoners distinctly knew the nature of the proclamation issued. Having acquitted of the contumacy, the 2d Judge records his opinion for a sentence of death against the prisoners in the separate trial for murder. The 2d Judge has stated doubts, whether the proclamation published by Regulation IX. 1808, applies to the case of these prisoners. I am strongly of opinion, that the proclamation never should have been authorized; that on trial we are bound to consider it illegal; and that, on that ground, we ought to acquit of the contumacy. I cannot, however, agree with the 2d Judge in acquitting, because the prisoners did not distinctly know the nature of the proclamation issued. The prisoners admit, that they had heard that they were proclaimed. The due promulgation, as required by the Regulation, is distinctly proved. Were we to insist, in a trial for contumacy, on its being distinctly proved that the prisoners were fully apprized of the penalties and provisions of the Regulation, no conviction for contumacy could ever take place. In the trial for murder, I consider the charge to be established, and that the prisoner should be sentenced to death; but before passing sentence in that case, another voice appears necessary, in order to determine what is to be done in the trial for contumacy." These opinions were, however, over-ruled by the opinion of the majority of the Court, on the charge of contumacy as above detailed; and the prisoners were sentenced to perpetual imprisonment in transportation. The Judge of Circuit was at the same time informed, that he need not have taken a *futwa* from his law officer in that case.

1823.

KHODA-BUKSH'S case.

sword, which caused his death, on the 16th of the same month. Immediately on receiving the wound, Illahee Buksh called for aid; his brother (Mendoo) and his son (Koora) came to his assistance; the prisoner was seen running away with a bloody sword in his hand, and was seized by Munsub Khan and Deedar Buksh, Chokeedars. When taken to the Thana, he said that he was intoxicated; that a servant of Gholam Ali Khan had been impertinent to him; that Gholam Ali Khan sent people to seize him, who maltreated him; that he made a cut at one of them, but does not know if it took effect; and that the deceased had struck him two blows. He then said, that the sword produced was his, and that with it he had wounded Bukshoo; but that he was intoxicated at the time, and did not know whether he was striking a man or an ass. Before the Magistrate, the prisoner pleaded that he had been intoxicated, and did not know what had occurred while in that state. Before the Court of Circuit, he pleaded not guilty.

suffer death, though no malice or other adequate motive for the homicide directly appeared on trial.

The law officer of the Court of Circuit declared the prisoner convicted of the wilful murder of Illahee Buksh, *alias* Bukshoo, and liable to death by *Kissas*, in which conviction the Judge concurred.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Khodabuksh Afghan, son of Ahmud, of the wilful murder of Illahee Buksh, *alias* Bukshoo, declares him liable to suffer death by *Kissas* for the crime.

By the Court. C. Smith, (second Judge.) "It is clear that the prisoner wounded Bukshoo with a sword, and that Bukshoo died on the third day, of the wound; nor is there any thing in the proceedings to verify the prisoner's assertion, that he used his sword after having received two blows from a *lathee*; neither is it established that the prisoner was mad or drunk: though he at first jumped about, and talked incoherently, still no motive appears for the murder, nor has any been assigned, either by Bukshoo, or by the prosecutor or witnesses. As he bereaved Bukshoo of life, and as his purpose must have been murderous, though his motive is still an enigma, I concur in the *futwa*, and am of opinion that he should be adjudged to suffer death." The chief Judge (W. Leycester) concurring generally in the above opinion, sentence of death was passed upon the prisoner.

1823.
April 28th.
INCHA KOLEE'S case.

GOVERNMENT, *against* INCHA KOLEE.

Charge—MURDER.

There being no evidence against a prisoner but his own confession, in which he admitted having killed his wife by repeated sword wounds, after she had wounded him; and his person exhibiting two wounds; the Court, deeming his defence probable, sentenced him to five years imprisonment.

THIS case was tried by the Commissioner on deputation at Kumaoon, under Regulation X. of 1817, and was forwarded to the Nizamut Adawlut by him, as he had not the benefit of the opinion of a native law officer upon it, and moreover, as the investigation on the spot where the crime was committed was in his judgment very deficient. The case was as follows. On the 11th of November 1822, Lieut. Durie, commanding a detachment at Loah Ghaut, addressed a letter to Mr. Commissioner Traill, stating, that the corpse of a woman had been found mangled, and that there was every reason for supposing that the woman had been murdered by her own husband, a Lascar in his (Lieut. Durie's) employ, as that person, by name Incha Kolee, had absconded, after leaving his only child with the other servants, and accounting for some blood which was observed on his clothes by saying that it was from his own body, and that he had been quarrelling with his wife. In the course of the same day, the prisoner, having returned to the lines, was apprehended by the sepoys, and forwarded to Mr. Commissioner Traill. The prisoner Incha Kolee made a full confession of his crime, both before Mr. Commissioner Traill, and on trial, alleging, on both occasions, that having had a sharp dispute with his wife, she wounded him with a knife in the abdomen more than once, when he drew his sword, which was near him, in a rage, and killed her by several blows. The prisoner's body bore the marks of two wounds on the abdomen, one little more than skin deep, but several inches in length. The other appeared to have been given with the point of a knife, or other sharp instrument, and to have entered deep. The prisoner had also marks, on the thumb of his left hand, of having been wounded. There were no witnesses to the fact, nor indeed to any of the circumstances connected with it; not even as to the place where the corpse was found. The surgeon reported by letter the nature of the wounds found on the corpse, and the prisoner's witness for the defence, Kurumbuksh, deposed, that he saw the corpse with the wounds upon it. There was no evidence whatever indicating malice or probable cause for the crime. The Commissioner expressed his opinion, that the prisoner was convicted of culpable homicide, and that he was deserving of five years imprisonment.

The Court of Nizamut Adawlut, (present W. Leycester and J. Shakespear,) concurring with the Commissioner in considering the prisoner duly convicted of culpable homicide, sentenced him to five years imprisonment with hard labour in the jail at Bareilly.

1823.
April 30th.
BABOOA NUTT'S case.

BUKHSH,
against
BABOOA NUTT.

Charge—MURDER.

THE prisoner Babooa was charged with the murder of Gheesai, the father of the prosecutor, and ultimately tried for that offence at the second sessions of 1822, for Azimgurh. The outline of this case was as follows.

The deceased had gone to the village of Rusoolpoor, two coss from his home, to purchase a buffalo. In this village the prisoner resided; and from him the purchase was made, for 13 Rs. 12 As. The deceased requested him to take the animal to his house, to which the prisoner assented, and they set off together. In a jungle about midway, (within the limits of the Nuwab Wuzeer's territory,) the prisoner fell upon the deceased with a *lathee*, with which he killed him. After the lapse of five days, Gheesai not returning home, his son (the prosecutor) went to Rusoolpoor to enquire about him, and there he heard what is above stated regarding the purchase of the buffalo; and at a neighbouring village (Rummoorpoor), whither he proceeded to make further enquiry among some friends he had there, he learnt from one Bechun (a witness), that the prisoner had lately sold a buffalo to the Zemindar, Janoo, who confirmed what had been asserted. Now Bechun knew that the prisoner had but one buffalo belonging to him, and this gave rise to suspicion of the fact, which he communicated to the prosecutor, and the prisoner was apprehended. A *Punchayut* assembled, and after a good deal of questioning, he confessed having murdered the deceased, as above related, and sold the same buffalo again to Janoo; and three rupees which he had received in the first purchase, were given up by him to the prosecutor. The prisoner was carried to the Thana. Here he again confessed having killed the deceased, and pointed out the spot where he had done so; but the body was not to be found. He asserted that he was intoxicated, and that what occurred was in consequence of a quarrel regarding the purchase money. The same was repeated before the Magistrate. Before the Court of Circuit he denied every thing, but there was evidence more than sufficient to prove the charge.

Held that a capital sentence may be passed under Regulation IV. of 1822, in spite of a *futwa* of *Deut.* In this case the law officers gave a second *futwa*, declaring the prisoner liable to death by *Seasut* on conviction of *Shibha-i-umd*; and the prisoner was hanged under the peculiar circumstances of the case, though the corpse of the deceased was not found.

The trial had been originally furnished to the Court, so long ago as January 1820. The trial of that period was quashed by the Court of Nizamut Adawlut, in consequence of the crime having been committed within the limits of the territories of Oude, and the sanction of the Governor General to the trial not having been obtained previously to the commitment of the prisoner. The non-attendance of witnesses and other obstacles had subsequently caused the proceedings to be repeatedly postponed, and the present was the seventh sessions held since the case was in the first instance before the Court of Circuit. In referring the proceedings, the Judge of Circuit observed, that he had only to advert

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BABOOA NUTT'S case.

to the suspense to which the prisoner had been exposed through so long a period of trial, as a ground upon which the Court might perhaps feel justified in imposing a mitigated penalty for his crime.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Babooa Nutt, son of Munsa, of killing Gheesai, the prosecutor's father, declared *Kissas* to be barred by the uncertainty as to the weight of the weapon with which he killed him (a *chobdust*), and *Deeut* to be incurred.

By the Court. C. Smith, (second Judge.) "I think the prisoner is very clearly convicted of having deliberately murdered Gheesai, the butcher to whom he sold the buffalo, and whom he appears to have killed that he might get back the buffalo, and sell it again (as he did) to Janoo Zemindar. The only difficulty seems to be as to the corpse, which was not found; but the marks of blood, and of the rolling or struggling of a body, which were visible on the spot pointed out by the prisoner himself as the place where he killed Gheesai, may, I conceive, be received as sufficient to supply that defect. In one *futwa*, *Kissas* is said to be barred, because it is not certain whether the *chobdust* was heavy or light. In many parts of the proceedings, it is called a *lohbundha*, an iron-bound staff. There can be no doubt as to that being a mortal weapon; and even without iron, a common *chobdust* applied to the head, as the prisoner appears to have applied his, is quite heavy enough to inflict a deadly blow.

"The ground suggested by the Judge of Circuit for mitigation is surely, if we take the prisoner, as I take him to be, a foul murderer, no legitimate ground at all. If it be said, on one hand, that he has suffered suspence for nearly four years, it may be urged, on the other, that he has had nearly four years more of life than he was entitled to. I am of opinion, that the prisoner should be adjudged to suffer death."

W. B. Martin, (fifth Judge.) "I agree in opinion with the 2d Judge that the conviction of Babooa of the crime of the deliberate murder of the butcher Gheesai is fully warranted by the prisoner's confessions at the Thana, and before the joint Magistrate at Azimgurh, and by the circumstances confirmatory of these confessions, which are stated in the evidence on the part of the prosecution. The instrument by which the murder was perpetrated is called by several of the witnesses a *lohbundha*; and although it is denominated a *chobdust* in the prisoner's confession, yet no doubt can exist of the probable infliction of a mortal blow by such a weapon on the skull, the part on which the deceased appears to have been struck by the prisoner. The traces of blood discovered on the spot pointed out by the prisoner, and the other corresponding indications which were then found, leave no doubt in my mind of the prisoner's guilt; and I therefore concur in the proposed sentence of death." Subsequently to the delivery of these opinions, some doubt was started as to the competency of the Court to award a sentence of death, under the terms of the *futwa* of their law officers, which, however, the second Judge was of opinion had no foundation, recording his opinion in the following terms.

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"I have no doubt of the legality of this sentence. It is clear, from clause 3, section 10, Regulation VIII. 1803, taken with the sixth clause of the same section, that a *futwa* of *Deeut*, for whatever denomination of homicide it may have been given, neither bars a total exemption from punishment, where the homicide may, to the satisfaction of the Court, have clearly been committed by misadventure, nor a sentence of death, where it shall clearly appear that the homicide was committed with a murderous intention. By clause first of the same section, all distinctions, as to the weapon, in a *futwa* may be disregarded by the Nizamut Adawlut; and the terms which there occur, "except as evidence of the intent," are for the guidance of the Nizamut Adawlut in determining upon the merits of the case. They mean, if the weapon, in the judgment of the Court, is not such as acquits of a murderous intent, the prisoner may be hanged.

"The whole spirit of that section I take to be, that the *futwa* finding the act of killing, the Nizamut Adawlut shall decide whether the killing is murder, or culpable homicide, or homicide purely accidental. Further, let us take the *futwa* in the present case as finding the prisoner guilty of the killing, and acquitting him of the murderous intent, still two Judges might convict him of both, and sentence him to death for the murder, under the general rule prescribed in section 4, Regulation XVII. 1817, which says, that where the *futwa* acquits of any part of the charge, and two Judges think the evidence sufficient to convict of the whole, they may proceed in like manner as if the *futwa* had convicted the prisoner of the whole charge. On the former trial of the prisoner on the same charge, quashed by this Court on the 14th of February 1820, for informality, the prisoner was found guilty by the law officers of wilful murder, and but for the informality, would no doubt have been adjudged to suffer death.

"On a further question to the law officers in this case, whether the prisoner intentionally killed the butcher, and if he did not, of which of the other four sorts of homicide he is guilty? they answer, that there is a strong presumption of his having killed him intentionally, and that he may be sentenced to die *Seasutun*, the denomination of homicide being according to the *Shurra, Shibha umd*. Even had they persisted in their *futwa* of *Deeut*, I should equally have thought two Judges of this Court competent to pass a capital sentence."

The fifth Judge (W. B. Martin) fully concurred in the above exposition of the legality of the proposed sentence, and the prisoner was adjudged to suffer death accordingly.

1823.
May 1st.
LUKHUN MANJHEE'S case.

ARJOON MANJHEE,
against
LUKHUN MANJHEE.

Charge—MURDER.

Case of a prisoner convicted of beating a girl on the head with a stone, which caused her death; no malice being proved or probable cause assigned, and the prisoner becoming mad shortly afterwards, the Court attributed the act to insanity.

THE prisoner was tried at the 1st sessions of 1823, for zillah Bhaugulpore, for the offence of murdering the prosecutor's daughter, Mussummaut Kurmee. It appeared, from the facts and circumstances which came out on this trial, that no person was present when the murder was perpetrated; but that immediately after committing it, the prisoner went and informed the inhabitants of the village in which the parties resided, that he had killed the deceased by beating her brains out with a stone. He was immediately seized, and delivered over to the custody of the police officers, before whom he confessed the murder, and repeated his confession before the Magistrate. It did not appear from the evidence that the prisoner was actuated by any motive. The deceased was a girl about 16 years of age, and was unmarried. She had gone to his house to fetch a *pealah*, or wooden measure, when he followed her, and almost immediately after beat her brains out with a stone.

The *futwa* of the law officer of the Court of Circuit acquitted the prisoner, on the plea of insanity; but from the evidence for the prosecution, there was no proof that the prisoner laboured under any sort of mental derangement previous to the commission of the murder. Doctor Macra, the native doctor, and the rest of the witnesses who were examined as to his behaviour whilst in confinement, all declared that the prisoner did not shew symptoms of madness until some time after his commitment for trial; but they were of opinion, that at the time of his trial he was afflicted with insanity. Conceiving the prisoner guilty of murder, the Judge of Circuit submitted the case for the decision of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Luckhun Manjhee, son of Mirza Manjhee, of having killed the prosecutor's daughter by blows with a stone, declared, that on account of the suspicion of his having been insane at the time, *Kissas* was barred, and *Deeut* incurred. The second Judge (C. Smith) was of opinion, the fact being proved, and the motive still undeveloped, the murder could not be accounted for but on the score of insanity at the time it was committed.

W. Leycester, (Chief Judge.) "If the prisoner be now mad, as seems agreed, he ought not to have been tried. The proceedings are quite null and void, neither sufficient for an acquittal or a conviction. I would annul the whole proceedings, and direct that till his recovery he be confined in the insane hospital, and that after his recovery he should be tried. I do not think it safe or sound doctrine to assume insanity because we can discover no motive, nor has subsequent insanity any thing to do with it. There is the strongest evidence that the man was sane when he committed the act. Whether the present may not be assumed madness, I much doubt. We had lately a

1823.

LUKHUN MANJHEE'S case.

case from Bareilly, in which the surgeon deposed to insanity; and on sentence being passed on another prisoner on the case, the man, concluding he had escaped, instantaneously recovered his full intellect, and then the surgeon deposed to his sanity. This may be a case of the kind."

J. Shakespear, (third Judge.) "Our *futwa* convicts the prisoner, but declares him liable only to *Deeut*, in consequence of suspicion of insanity. The evidence clearly establishes the fact of the murder, and also that the prisoner shewed no signs of madness till subsequent to the commission of the crime. I have put a question to the law officer, under the provisions of section 4, Regulation IV. 1822. Though they seem to think, in their first *futwa*, that there are grounds for suspecting previous derangement, I do not see how the question of insanity could be fully ascertained until the prisoner had been put upon his trial; and I see no objection to that which appears to have been the usual course of procedure. I consider the prisoner to be convicted of murdering the girl when he was in a sane state of mind; and I think, under all the circumstances of the case, that he should be sentenced to perpetual imprisonment. If he is feigning madness, he will not, under this sentence, escape the punishment due to his crime; and if he is really deranged, he will be well taken care of, and prevented from committing similar acts in future."

W. Dorin, (fourth Judge.) "Of the fact that Musummmaut Kurmee died by the act of violence committed by the prisoner, there seems no doubt. No motive for the act is discoverable, and madness seems to have made its appearance unequivocally during the confinement in jail. I agree with the 2d Judge, in presuming the homicide to have been committed under the influence of madness, and of that unaccountable spirit of mischief often accompanying it. To draw any other conclusion, I think would be unsafe, under all the circumstances of the case." To this the fourth Judge added, that the order ought to prevent his going at large again; but the second Judge being of a contrary opinion, the sentence was issued in the following terms.

"The Court, concurring in the *futwa*, both as to the proof of the fact, and as to the presumption of the prisoner's having been mad at the time, do not think proper to sentence him to any imprisonment in lieu of *Deeut*; but, in consideration of the state of his mind, direct that he be detained in the insane hospital till he shall have perfectly recovered his senses, and till some one or more of his friends shall enter into an engagement, to the satisfaction of the Magistrate and Court of Circuit, to take care of him, and prevent his doing further mischief*.

* The fourth Judge did not approve of leaving the discretion to liberate ultimately with the Court of Circuit, and thought it ought to have rested with the Nizamut Adawlut; but he signed the sentence in the above form, the case having been already before four Judges.

1823.
May 1st.
Case of PURSHUN and RADHE.

GOVERNMENT,
against
PURSHUN and RADHE.

Charge—MURDER.

Case of a Choukeedar convicted of culpable homicide, by using unnecessary severity towards a man whom he found in his master's house at night: sentence, three years imprisonment.

THE prisoners Purshun and Radhe were tried for murder at the first sessions of 1823, for zillah Sarun. From the evidence adduced in this case, the following would appear to be the real circumstances under which it occurred. On the night of the 15th of February 1823, about 12 o'clock, a person named Asalut Khan, the Khansaman of Mr. Kennedy, the Collector of the district of Sarun, having entered that part of the house of Mr. Muston, the Civil Surgeon, which is appropriated to the residence of the females, one of the women gave the alarm to the prisoners, who were employed as Chowkeedars. Upon this they entered the house, and the prisoner Radhe having seized the deceased in his arms, the prisoner Purshun inflicted upon him three blows with a heavy club. The deceased having fallen down in a state of insensibility, the prisoner Purshun dragged him by the heels out of the house into the verandah, where they kept him for a considerable time. In the mean while, the deceased, having come to himself, implored their mercy, and begged to be released. The prisoner Purshun, however, taking him by the arm, dragged him away to a godown at some distance, where he continued all night, and was found dead in the morning. Upon this, Purshun had him taken and laid at the foot of the wall of a small enclosure or compound, to the north of the female apartments above mentioned. The above facts were gathered from the depositions of Musst. Rajhun, Musst, Aswa, and other witnesses, corroborated by the confessions of the prisoners. No evidence existed, tending to indicate the motive which induced the deceased to enter the house. From his circumstances, situation in life, and character, the supposition that he entered with a felonious intent, appeared highly improbable. Neither did the quantity of *tarry* which he was stated to have drank appear sufficient to justify the idea that he entered under the influence of intoxication. The only remaining object of his entering, viz. for purposes of intrigue, appeared to receive some colour from the circumstance of the native lady having retired to bed some time before the old woman who gave the alarm entered the room, and from the facility which appeared to exist, of entering the house by opening the windows, without the necessity of leaping the wall of the northern compound. Indeed the circumstance of Purshun's conveying the corpse, and depositing it at the foot of the northern wall, afforded, in the opinion of the Judge of Circuit, strong reason to believe that the account of his entering by that way was a mere invention, fabricated by the witnesses, to bear out the plea that he entered burglariously, and consequently to insure the impunity of the prisoners.

The *futwa* of the law officers acquitted Radhe, and declared Purshun guilty of a species of culpable homicide short of murder. To that part of this *futwa* which regarded the offence of Purshun, the

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Judge stated, that he could not give his concurrence; and that, from the circumstance of Purshun's having come from a godown at some distance, on hearing the alarm, it must be supposed, that his mind possessed an ordinary degree of deliberation and collectedness. He added, that in a spacious room (part of the European house) lighted by two lamps, seeing a person weakly and unarmed, who had just been seized by the other Chowkeedar, he, deliberately, and without any apparent necessity, proceeded to inflict a number of blows with a heavy club; that had he stopped here, something might possibly have been urged in extenuation of his offence, but he dragged the insensible body through the house by the heels; and the subsequent violent conveying of the deceased to the godown, and confinement of him there, without assistance, till his death, appeared to evince that degree of deliberate malice and brutal insensibility to the sufferings of a fellow creature which went to constitute the crime of murder; that the circumstances of their recognizing the deceased, and the omission of giving information to Mr. Kennedy, who resided close by, or at the Thana, must also be taken into consideration; that from the evidence in the case, and the circumstance of his walking to the godown at a considerable distance, there appeared also reason to believe, that the life of the deceased might have been saved, had timely assistance been afforded, and were no further violence committed, which latter surmise the nature of the case and the character of the natives rendered by no means improbable; that the opinion of the surgeon, that his death was occasioned by one of the blows "acting on a brain, already excited by intoxication," unsupported as it was by the evidence of the case, or by the actual inspection of the brain, (the skull not having been dissected,) appeared wholly gratuitous, and had no weight with him; and that he therefore considered it his duty to recommend to the Court, that the prisoner Radhe should be acquitted, and the prisoner Purshun condemned to suffer death.

The *futwa* of two of the law officers, convicting the prisoner Purshun Rajpoot, son of Risal Singh, of the murder of Asalutt Khan, *khansaman*, declared him liable to suffer death by *Kissas* for the crime; and convicting the prisoner Radhe Rajpoot, of being an accomplice in the murder, declared him liable to *Acoobut*.

By the Court. C. Smith, (second Judge.) "It was an unfortunate occurrence. The poor *khansaman* seems to have been no further culpable than in having taken rather too much intoxicating liquor; but I think it preposterous, under all the circumstances of the case, to regard Purshun as a wilful murderer. I deem it culpable homicide, and would sentence him to three years imprisonment in the zillah jail. Were we to deal with him more severely, it would discourage Chowkeedars from being active in the protection of their master's houses. Radhe, Mr. Elliott ought to have released himself, by clause 2, section 2, Regulation LIII. 1803." The third Judge concurring in this opinion, the following sentence was issued.

The Court, considering Purshun Rai to have been guilty of culpable homicide, and not concurring with the *futwa* as to Radhe Rai,

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Case of PURSHUN and RADHE.

sentence Purshun Rai to be imprisoned three years with labour in the zillah jail, and direct that Radhe Rai (whose guilt they do not consider to be established) be immediately released.

"The Court observe, that Radhe having been acquitted by the Circuit *futwa*, and the Judge of Circuit concurring therein, the reference of that prisoner's case was unnecessary, and that he ought to have been released by the Judge of Circuit."

1883.

May 7th. UMERODH PANDE'S case.

GOVERNMENT, *against* UMERODH PANDE.

Charge—HIGHWAY ROBBERY.

In a case of conviction by the law officer of robbery with attempt to murder, the trial must necessarily be referred to the Nizamut Adawlut, whether the presiding Judge concur in or dissent from the *futwa*.

THE attention of the Court of Nizamut Adawlut was attracted to the case of the above-named individual, who was one of those punished at the 1st sessions of 1823, for zillah Cuttack by the Commissioner. His offence was defined to be, "attempt to commit murder with intent to rob," and for that offence he was sentenced to imprisonment for three years with hard labour; but, in consideration of his advanced age, he was exempted from corporal punishment. This sentence appearing to the Court to be wholly inadequate, they desired that the original proceedings of the Magistrate on the commitment, and a copy of the proceedings of the Commissioner's Court on the trial of the individual in question, might be submitted for their inspection and final orders. In submitting this case, the Commissioner accompanied it by the following observations. "The prisoner in this case was an infirm old man of sixty-two years of age. Corporal punishment was therefore remitted; and although he was convicted on his own confession before the Magistrate of the offence charged, there nevertheless appeared reason to doubt whether the crime intended was not rather against the person than the property of the prosecutor. It is not proved that the prisoner had about his person any knife or instrument, which he would probably have provided, had he contemplated the perpetration of murder and robbery; especially as he was evidently inferior to the prosecutor in bodily strength. Under all the circumstances of the case, more especially adverting to the advanced age of the prisoner, a sentence of imprisonment with hard labour for three years appeared adequate."

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoner Umerodh Pande of having, with a murderous intention, attempted to strangle the prosecutor for the purpose of possessing himself of his ornaments, declared him liable to discretionary punishment by *Acoobut* for the offence.

By the Court. C. Smith, (second Judge.) "It seems to me clearly established, that the prisoner meant both to kill Anam Doss and to rob

1823.
UMERODH PANDE'S case.

him. I am of opinion, therefore, that the Commissioner's sentence should be reversed, and the prisoner sentenced to imprisonment for life."

In this opinion the third Judge (J. Shakespear) entirely agreed, and the following sentence was issued. "The Court, concurring in the *futwa*, annul the sentence passed by the Commissioner of Cuttack on the 13th of January last, and sentence the prisoner Umerodh Paude to be imprisoned for life in the zillah jail. The Court observe, that the *futwa* of the law officer of the Commissioner's Court having distinctly convicted the prisoner of an intent to murder, with a view to rob, and the Commissioner's letter of explanation shewing that he took a different view of the case, that is, did not deem it sufficiently established that he intended to murder and rob the prosecutor, he ought to have refrained from passing sentence, and referred the case to the Nizamut Adawlut, upon the ground of a difference of opinion with his law officer. Indeed the Commissioner's conception of the case, as given in the above cited letter, viz. that the crime intended by the prisoner was rather against the person of the prosecutor than his property, yet that the prisoner intended neither robbery nor murder, appears to the Court to be altogether unintelligible."

On the receipt of these orders, the Commissioner submitted an explanation to the following effect. "The Nizamut Adawlut has remarked, with reference to my letter which accompanied my proceedings on the trial: "That the Commissioner's conception of the case, as given in the letter cited, viz. that the crime intended by the prisoner was rather against the person than the property of the prosecutors, yet the prisoner intended neither robbery nor murder, appears to the Court to be altogether unintelligible." It is therefore necessary distinctly to state, that under all the circumstances of the case, I was strongly impressed with a belief, that the assault on the prosecutor was committed by the prisoner with intent to perpetrate an unnatural crime. The Nizamut Adawlut is probably aware, that a practice has long obtained in many districts of Bengal, of charging with burglary, or with intent to rob, persons found at unseasonable hours in or near their neighbour's premises, and suspected of illicit intercourse with some female of the family. The disgrace, however, of such a disclosure precludes its being made the ground of prosecution; and to save the female from disgrace, the culprit commonly confesses a crime which he never committed or contemplated, and is convicted upon that confession. In the course of rather a long experience in the business, both of the police and of the criminal courts of the country, such cases have not unfrequently come under my own notice. In the present case, the prisoner Umerodh Pande was charged with an assault, with intent to murder and rob the prosecutor: of such intent there was no proof, (except the confession of the prisoner before the police,) but strong probabilities against it; such, for instance, as his manifest inferiority of bodily strength, compared with that of the prosecutor, which rendered it entirely improbable that he should attempt to overcome the prosecutor by force, and the circumstance of his being unprovid-

1823.
UMROODH PANDE'S case.

ed with any instrument for the perpetration of murder. In admitting such intention, however, he probably deemed an attempt to murder and rob, a crime the least infamous of the two. And as the prisoner thought proper to confess that crime, his conviction by the law officer, and my concurrence therein, necessarily followed. There was not, therefore, in this case, any ground for abstaining from passing sentence, and referring the proceedings to the Nizamut Adawlut, as the Court is pleased to observe would have been proper; for there existed no difference of opinion between the Judge and his law officer in regard to the full and legal conviction of the prisoner. Sentence was accordingly passed, of imprisonment for three years with hard labour, which, adverting to the age and bodily debility of the prisoner, appeared tantamount to a sentence of imprisonment for life, which the Court has now passed, or such at least as must, at the expiration of the stated term of imprisonment, send him forth, if not reformed, at least in every way a harmless member of the community, and a useless incumbrance to a jail."

The above explanation called forth from the Nizamut Adawlut the final orders following. "The Court observe, that on the former consideration of your proceedings on the trial, it was impossible for them to know that you entertained a view of the case which you had not expressed in your abstract of cases decided without reference, which was different from that stated in the *futwa* of your law officer, and which was neither contained in the charge of the prosecutor nor avowed in the confession of the prisoner. The Court further remark, that the finding of your law officer, viz. that the prisoner was guilty of squeezing the neck of the prosecutor with an intent to kill him for the sake of taking his ornaments, brought the case distinctly and directly under clause 4, section 8, Regulation XVII. 1817, and left you no other legal course to pursue, but that of referring the case to the Nizamut Adawlut, whether you concurred in opinion with your law officer or not. Among the grounds on which you consider it as entirely improbable that the prisoner should attempt to overcome the prosecutor by force, you urge his having had with him no instrument for the perpetration of murder, and his manifest inferiority of bodily strength compared with that of the prosecutor; but (not to mention that the prosecutor swore to the prisoner's having drawn forth a knife) it is obvious, that for strangulation, the mode of attempting to kill the prosecutor which is specified in both *futwas*, the hand alone is a sufficient instrument; and a conscious inferiority of strength, if it must have operated to deter the prisoner from attempting murder, must equally have operated to deter him from an assault with an intent to perpetrate an unnatural crime." In conclusion, the Court observed, that they saw no reason to depart from that view of the case, and of the Commissioner's proceedings, which had been recorded in their former sentence.

CASHEE,
against
POORYE LODE.
Charge—RAPE.

1823.
May 10th.
POORYE LODE'S case.

THE prisoner was tried on a charge of rape, at the 2d sessions of 1822, for zillah Sarun. From the confessions of the prisoner taken at the Thana and before the Magistrate, it would appear, that having seized his niece, a little girl of about seven years of age, he committed a rape upon her body, and left her in a ditch. Two witnesses, by name Hunwunt and Puttee, attracted by her screams, found her lying there bleeding, and saw the prisoner running off, when they apprehended him. The case was clearly proved, not only by the prisoner's confessions and by the cries made by the girl at the time, but also by the lacerated state of her body when seen by one Dabia, a midwife. In submitting this case, the Judge of Circuit observed, that he concurred with his law officer in finding the prisoner guilty of having committed a rape; and, under all the circumstances of the case, was of opinion that he should not be sentenced to a milder punishment than 39 *corahs*, and 14 years imprisonment with hard labour. He added, that in compliance with the orders of the Court, contained in their proceedings of the 27th February last, in the case of Jeetun and Goordial, he had directed the law officer in future, on conviction in cases of rape, "*to state to what the prisoners convicted are liable;*" and that in reply he (the law officer) had observed, that in omitting to make such statement, he had only acted in obedience to clause 1st, section 6, of Regulation XVII. 1817, which directs that law officers shall declare "*only whether the prisoner is legally convicted,*" &c. The Judge of Circuit concluded: "In this opinion, that he had acted in strict conformity to the Regulation in question, I entirely concur. He has, however, in submission to the orders of the Court, deviated from it in the present instance, and will continue to do so, unless directed to do otherwise."

Held that the provision contained in clause 1, section 6, Regulation XVII. 1817, (which requires the law officer to declare only whether the prisoner is legally convicted) is not applicable to a case of rape attended by robbery.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner of rape upon the body of Konree, a little girl, declared him liable to *Acoobut* for the offence.

The Court, (present C. Smith and W. Dorin,) concurring in the *futwa*, sentenced the prisoner to receive thirty stripes of the *corah*, and to be imprisoned and kept to hard labour in banishment for the term of ten years. Upon the subject of the remarks offered in the Judge of Circuit's letter, upon the observations contained in the sentence passed by this Court on the 27th of February, in the case of Jeetun and Goordial, the Court observed, that had those two prisoners been convicted by the *futwa* of the law officer of the Court of Circuit of the crime of rape and assisting in rape, only, the law officer would, in refraining from stating to what the prisoners were liable, have been justified under clause 1, section 6, Regulation XVII. 1817; but the prisoners having been convicted of rape, accompanied with *ruhzunee*, or highway robbery, the Court thought the more proper

1823.
POORYE LODE'S case.

course would have been, to state to what consequence the Moohummudan law rendered them liable. In the present case, which was for rape alone, it was not necessary to declare the penalty. The Court desired that this observation might be communicated by the Court of Circuit to Mooftee Abbas Ally, upon his return from Circuit, not in the way of censure, which was by no means intended, but merely for his information and future guidance.

1823.
May 16th.
Case of MUNGTA and SAIR.

MOWASHEE,
against
MUNGTA and SAIR.

Charge—MURDER.

A zemindar (the deceased) required the services of his tenants (the prisoners), when they abused him, and he holding up his shoe as if to strike them, they committed an assault upon him, which occasioned his death. Held that this amounted to culpable homicide, punishable by five years imprisonment; chiefly with reference to the relative situations in life of the parties.

THE trial of Mungta and Sair, charged with the murder of Sahiboo, came on at the second sessions of 1822, for zillah Seharunpore. The facts of the case, as they appeared in evidence, were as follow. On the 24th December 1822, Sahiboo, Zemindar of Futtihpore, went to the house of Mungta Kuhar, and desired him and his relations to come to his sugar-press, and remove some jars of molasses to his house. Mungta promised to do so, when at leisure; but Sahiboo required the attendance of the Kuhar immediately; and abuse following, Sahiboo took off his shoe to beat Mungta, when Mungta laid hold of him. Mungta gave him a blow with a wooden *phowree*, (which is a small semicircular piece of wood attached to a short bamboo, for raking up cow-dung.) Mungta and Sahiboo then wrestled, and fell on the ground; and the prisoner Sair (a boy about 15 years of age) kicked Sahiboo. He however got up, when a person named Hurrooa gave him a push, and he again fell down apparently in a fainting fit, but died. Mungta admitted, that he and Sahiboo wrestled together; and Sair stated, that he was not present when the quarrel occurred. Suwye, (uncle of the deceased,) who was also engaged in the quarrel, attributed the death of Sahiboo to the bruises which he received, and deposed that there were marks on the body; but Dewan Singh and Mungul Khan, who saw the body when brought to Saharunpore, deposed, that except a small scratch (occasioned by the *phowree*), there were no marks of violence visible.

The law officer of the Court of Circuit declared the prisoners convicted of beating Sahiboo, for which they were liable to *Tazeer*. The Judge observed, that he was not satisfied with the evidence against the prisoners, and that he did not consider it probable that such a scuffle could have occasioned the death of Sahiboo without some previous indisposition; and as the deceased originated the quarrel, and took off his shoe to beat the prisoners, he thought they should be acquitted, and he therefore referred the trial for the orders of the superior Court.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoners Mungta Kuhar and Sair Kuhar of squeezing the

1823.
Case of MUNGTA and SAIR.

throat of the deceased Sahiboo, and of kicking him under the navel, declared them liable to severe *Arcoobut* for the offence.

By the Court. C. Smith, (second Judge.) "The prisoners owed the deceased, their Zemindar, a grudge, because he did not employ them in pressing the sugar-cane, an employment, it is stated, at which they were not expert. On his desiring them to go and take up the jars of molasses, they either gave him abuse, or spoke disrespectfully to him, on which he took off his shoe, and held it up as if he would strike them. On this they set upon him, and so maltreated him, that he died upon the spot. The provocation of a ryot giving abuse to his Zemindar, and that of the Zemindar lifting his shoe with an intent to strike, seem pretty equally balanced, and the ryots' abuse preceding the other act, the scale is turned rather in favour of the Zemindar. If ryots are thus to maltreat their Zemindars, it is obvious that the whole system of village discipline must be destroyed. I deem the prisoners guilty of culpable homicide, and would imprison them for five years with hard labour." The fourth Judge (W. Dorin) being of the same opinion, the following sentence was issued.

"The Court, concurring in the *futwa*, and deeming the prisoners guilty of culpable homicide, sentence Mungta and Sair to be imprisoned with hard labour in the jail of zillah Seharunpore for the term of five years."

1823.
May 22d.
LUCHMUN GEER'S case.

GOVERNMENT, *against* LUCHMUN GEER.

Charge—WOUNDING.

THE prisoner was tried at the first sessions 1822, for zillah Allahabad, on the charge of wounding one Leelageer.

On conviction of wounding with intent to kill, held that to award stripes would be inconsistent with the order declaring corporal punishment generally inappropriate in cases of culpable homicide.

It appeared, from the evidence of Leelageer (the wounded person), that on the 4th of Jeth, 1815, F. S. the prisoner came about dark to his house, and said that he was ill; that the witness took him into his house, and after giving him dinner, told him to sleep on a *chubootra* at a distance from him; but the prisoner replied, he would sleep near him, and accordingly did so; that about eleven o'clock at night, the prisoner attempted to cut the witness's throat with a sword, and fled with that weapon in his hand, leaving the scabbard and an *angocha* behind him; on which the witness gave the alarm, and several of the neighbours came, but too late to seize him. The witness believed that the prisoner, with whom he was previously acquainted, wounded him with the intention of robbery. The mark of one wound was evident on the witness's neck, and two others on his right hand and left arm. The witnesses Sumbool, Goordial, and Hurdial proved the voluntary confession of the prisoner at the Thana, where he attributed the act to the intoxication of opium taken as medicine.

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The witnesses Ramnarain, Ramdial, and Bhoojawun, proved the scabbard to be the property of the prisoner. Adhar Gorait deposed, that a female named Jherree brought the sword to him, and that he gave it to the police. This Jherree deposed, that one Ahlad gave to her the sword which she gave to the Gorait. Ahlad deposed, that he found the sword and a *doputta* under a tree. The prisoner acknowledged the confession, but said that it was extorted by blows, and that his witnesses would prove that the sword produced was not his property, but that his sword was left at the house of a person named Bishungeer. The prisoner's witnesses proved nothing in his favour.

The law officer of the Court of Circuit gave a *futwa* of conviction, on strong suspicion, of intention to kill. The Judge of Circuit observed, that the prisoner's confession was, in his opinion, perfectly voluntary, and that he fully concurred in the *futwa*; that the prisoner had failed to prove any part of his defence, or the fact of having taken opium as a medicine; that his insisting on sleeping near Leelageer, instead of on the *chubootra*, fully proved that he premeditated the attack; and that he should therefore be sentenced to the full punishment in cases of wounding with intention to kill.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Luchmun Geer of wounding Leela Geer, with an intent to kill him, declared him liable to *Acoobut* for the crime.

By the Court. C. Smith, (second Judge.) "The case had been stronger, had the *chela* Sheodas Geer attended before the Court of Circuit, and deposed as he did in the Foujdarry. Still I think the confession of the prisoner at the Thana, corroborated as it is by the circumstances of the sword being picked up and fitting the scabbard which was left at Leelageer's *muth*, and the total absence of all apparent motive in Leelageer to charge the prisoner falsely, must be received as true; and witnesses have sworn that it was voluntary and free. I think twenty *corahs*, and imprisonment for ten years with hard labour, would be a sufficient punishment."

W. Leycester, (chief Judge.) "I agree in the period of imprisonment, but not in awarding stripes, which seems inconsistent with the spirit of our construction of the 11th of May 1824, in cases of culpable homicide." The third Judge (J. Shakespear) concurred in this opinion, and a sentence of ten years imprisonment was passed accordingly*.

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* The second Judge subsequently observed, that this was not a case of culpable homicide, but of wounding with an intent to kill; but that he had no objection to remit the stripes.

BABOO KHAN,
against
ADHEEN SINGH and two others.
Charge—MURDER.

1823.
June 7th.
Case of ADHEEN SINGH and others.

In a trial for murder, circumstantial evidence, consisting of enmity between the prisoner and the deceased, threats used by the prisoner, and concealment of and denial that he possessed any weapon, the proof was held insufficient to convict.

THE above-named prisoners being charged with the murder of one Bussawun Khan, their trial came on for that offence at the 1st sessions of 1823, for zillah Juanpore. The circumstances, as they appeared in evidence, were as follow. The daughter of the prisoner Adheen Singh, had left her father's house, and cohabited with a Moosulmaun named Dhoondha. Two relations of this man, named Baboo and Bussawun, (the deceased,) apprehensive of revenge being taken by the family of the woman, appeared to have watched for some time during one night to prevent it. After this, notice was sent of the elopement to the Thanadar, who improperly, and in violation of the Regulations, apprehended Bussawun and Baboo, and afterwards released them of his own accord. Baboo and Bussawun, still anxious to avoid the consequences of the enmity thus incurred, assembled a *Punchayut* for the purpose of making some compromise, to which the prisoners were called, but refused to agree to any thing of the sort, and one of them threatened to bear the insult in remembrance. A few days after this, Bussawun, who had left his house early in the morning, was found about sunrise by his brother Baboo, lying dead in a field, with three spear and sword wounds.

On intelligence being taken to the police office, the Darogha went to the place, and proceeded to search the house of the prisoner Adheen (the father of the other prisoners). On being questioned, he denied having any arms in his house; but upon a strict search being made, two swords and a spear were found concealed under some straw; besides a matchlock, which was not concealed. The first witness being father of the man with whom the girl eloped, his evidence was rejected. The second witness, Meer Ramzan Ali, proved the death and wounds of the deceased. The third, Kaulee Khan, knew nothing of importance. The fourth witness, Phakooah, proved Adheen's denial of having arms in his house, and the discovery of them on search: he also proved, that Sheo Bukhsh said he would have an understanding with Baboo and Bussawun, (meaning that he would be revenged for the seduction of his sister.) This witness was sent to call Sheo Bukhsh to the mosque where the *Punchayut* was held. Hurreah proved, that Bussawun took his cattle to pasture about half an hour before daybreak. In the morning, this witness heard of his death, and took the corpse home, and went to the Thana. He proved that Adheen denied having arms in his house; also their subsequent discovery. He knew of the enmity about the elopement; and that Sheo Bukhsh threatened Bussawun and Baboo before fifteen or sixteen people. The prisoners, he said, were, at sunrise, employed in their cultivation about six or seven fields from the place of the murder. Kureem Bukhsh proved Adheen's denial, and the

1823.

Case of ADHEEN SINGH and others.

discovery of the arms. The prisoner Adheen denied the murder. He stated, that he had no enmity with the deceased or the prosecutor, and that he had written an agreement to that effect at the Thana. That one Hitcha would bear witness to his being at home, and that he slept at his door that night; and that one Sheikh Chumroo would bear witness to his taking seed to the field for cultivation. The weapons, he admitted, were his; and he stated, that three months had elapsed between the elopement of his daughter and the death of Bussawun. The defendant Sheo Suhai declared, that he was all night at his own house; that in the morning, Sheikh Chumroo called him to come with seed, &c. for cultivation; that Hitcha knew that he slept at home all night, and Chumroo that he went with him to the field. Sheo Bukhsh declared, that the plaintiff had an enmity against him, because of the elopement. His witnesses were the same as Sheo Suhai's. The above-named Hitcha deposed, that he lived three coss from the village where the murder occurred; that he was at his own house that night, and did not see the prisoners the whole of that day: and Chumroo deposed, that he was at his own house that night; that in the morning, at sunrise, he took his seed, barley, and cattle to the field, when he heard Baboo's lamentations, who said that the Rajpoots had killed Bussawun, and that he did not either go to the prisoners' house, or call them.

The law officer of the Court of Circuit delivered a *futwa* of conviction of participating in murder against all the prisoners, on strong suspicion, and declared them liable to *Acoobut*. From the circumstantial evidence against the prisoner Adheen, arising from the denial of the arms, and their subsequent discovery, and against Sheo Suhai and Sheo Bukhsh, from the threats held out at the time of the *Punchayut* towards the deceased, and from the false account given by all the prisoners of themselves and of their witnesses, the Judge was of opinion that they were guilty. He also thought, that the injury they had suffered in a great manner palliated their offence, as he had no doubt that the deceased aided Dhoondha in carrying off the daughter of Adheen; and although a considerable time had elapsed since the elopement, it was, he observed, to be recollected, that the parties were inhabitants of the same village, and that the sense of disgrace was kept alive by the interference of the police and the assemblage of the *Punchayut*, and by their continually meeting each other. He therefore recommended a punishment not exceeding five years imprisonment, with labour and irons.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoners Adheen Singh, Sheo Bukhsh Singh, and Sheo Suhai Singh, Rajpoots, of the wilful murder of Bussawun Khan, declared them liable to discretionary punishment extending even to death by *Seasut* for the crime. By the second Judge, (C. Smith.) "The daughter of the first prisoner eloped with Dhoondha, not with the deceased Bussawun Khan; but even had Dhoondha Khan himself been killed, it would be highly pernicious were this Court, by passing the sentence suggested by Mr. Cracroft, to countenance an idea that assassination from revenge is not wilful murder, and ought not to be punished

as such. The obvious enmity between the deceased and the prisoners; the previous threats of the prisoners; the endeavour to conceal the sword and the spear under the straw, and the failure of proof of the defence, amount in my mind to strong presumptive evidence of the charge being well founded. I do not see any ground for making any distinction between the three prisoners; and, adverting to all the circumstances of the case, I would sentence them to perpetual imprisonment in the jail at Allipore."

J. Shakespear, (third Judge.) "I am not by any means satisfied that the evidence in this case (which is entirely circumstantial) is sufficient for the conviction of any one of the prisoners. It is attempted to prove, that previous enmity existed between the parties; that threats had been uttered by the prisoners; and that arms had been found in their house, notwithstanding their previous denial. There is sufficient reason to believe the previous enmity established. Two of the witnesses, who are Chowkeedars, depose to the threats; but Phakooa says, that only Sheo Bukhsh used threats; whereas Hurreea says, that he heard both Sheo Bukhsh and his brother Sheo Suhai use the same expressions. Neither of these witnesses, however, name the father Adheen Singh as having threatened the deceased or the prosecutor: and as the Mohurrir, in his report of the 23d December 1822, made on the spot, says nothing of the threats, and the prosecutor in his examination at the Thana does not notice them, this part of the evidence against any one of the prisoners must be considered as insufficient. The evidence in regard to the finding of the arms after denial applies only to Adheen Singh, the first prisoner, as the other two prisoners do not appear to have denied that there were arms in the house. The arms were not bloody, and both the Chowkeedars say that they had not the appearance of having been washed. The swords having been oiled, and concealed in the straw, may have occurred as a precaution against injury to the steel from the external air. Adheen Singh might have denied the existence of these weapons to avoid suspicion, or to prevent their having being taken away by the police. The failure of the evidence to the defence set up by the prisoners is not, I think, sufficiently clear to warrant any conclusion. I am of opinion that the prisoners should be acquitted and discharged." The chief Judge (W. Leycester) fully concurring in this opinion, the prisoners were acquitted accordingly.

The Court observed, for the information and guidance of the Circuit Judge, that the circumstance of the first witness Juhoor Khan being father of the person with whom Adheen Singh's daughter eloped, was no sufficient ground for rejecting his evidence, though certainly one that might reasonably affect its credibility.

1823.
June 20th.
Case of RAMDUT and BALGOBIND.

GOVERNMENT,
against
RAMDUT and BALGOBIND.

Charge—MURDER.

The punditsof the Nizamut Adawlut, having formerly declared that a woman of the brahminical tribe, was not competent to perform the rite of *Anoomurrun*, state that this doctrine is not applicable to the case of a woman who is impressed with the belief of her husband's death, but of which event no certain intelligence has been received. This distinction was overruled by the Court.

THE prisoners were tried at the 1st sessions of 1823, for zillah Jaunpore, on a charge of murder, by assisting at an illegal *suttee* or suicide, by setting fire to a funeral pile on which one Guneshea had ascended, she not having at the time heard of her husband's death. The law officer of the Court of Circuit delivered a *futwa* of guilty, on full proof, against both the prisoners. In referring the case, the Judge of Circuit observed. "I consider the defendants guilty of wilfully causing the death of Guneshea; but it appears to me, that *Kissas* is barred only by the option the woman had of quitting the pile, when she felt the effect of the flames on her body; which circumstance the Moulovee does not notice. The parties acknowledged the fact of having been present at the sacrifice; and in defence stated, that the woman was sure of her husband's death, from having seen his ghost. They further alledged, that the flames arose spontaneously from the pile on which the woman had ascended. It appeared that Guneshea determined to burn over night, and that intelligence was sent to the Thana in the morning; but instead of waiting until the Darogha's arrival, Balgovind supplied wood, and caused his servants to construct the pile, and Ramdut set fire to it after she had ascended it; so that the act was completed before the Darogha could arrive. Sending news to the Thanadar was, therefore, a mere pretence; for they well knew, that waiting for his arrival would entirely frustrate their views. This wicked haste, the Judge of Circuit observed, to consummate an irregular *suttee*, was so close upon wilful murder, that if the *chitta* or funeral pile had been an inclosed one, or if the woman had been in any way confined, he should not have hesitated to recommend that the extreme sentence of the law be passed upon them; but under the circumstances of the case, he thought it would be sufficient to condemn them to seven years imprisonment, either with or without labour. He declared his opinion, that a less period should not be fixed; the crime being fully proved, independently of their confessions, and the punishment well deserved. If any notice, he added, was to be taken of irregular *suttees*, severe punishment ought to follow the perpetration of them; otherwise they would be found to increase, in proportion to the frequency of the question being agitated, and of the half measures adopted for their suppression being made subject of consideration or conversation by the natives. The Pundits of the Nizamut Adawlut, being consulted in this case, delivered the following opinion. "If a Brahmin be missing for the period of six years, and his wife, intuitively perceiving that he is dead, resolve to become a *suttee*, that woman is termed *Patibrata*, or a good and virtuous woman. The principal mark of a virtuous woman is her intention

of self-sacrifice on the death of her husband, as manifested by her resolution to become a *suttee*. She, through the excess of her chastity, may be assured by a dream, or by any other mode, that her husband is dead; otherwise no human being would without cause wish to die on a burning pile, as there is nothing so dear to human nature as life. Although it is contrary to law that a Brahmin woman should burn without the body of her husband, yet this authority does not apply to such cases as the present. It must be admitted, that the greatest of all virtuous resolves is that of a widow, who forms the intention of self-sacrifice on the death of her lord. Harita says, the *Anoomurrun*, or dying after her husband of a Brahmin woman, is a *Nityadhurma*, or eternal virtue; and it appears in other texts, that the sacrifice constitutes a temporal virtue *(Camya dhurma)*. The death is the principal means of acquiring such virtue; and the mode of doing it, as entering into fire, and the other ceremonies, are secondary: and wherever in an eternal duty a temporal one is neglected, the fruit of the former is not lost; consequently the death of the woman by ascending the burning pile under any circumstances is legal. Although it is stated in the question, that the husband's elder and younger brothers consented to the act, this appears to be a mere assertion of the prosecutor, but not acknowledged by the defendants, who alledge that they forbade her several times; and admitting that they consented to her act, yet it does not follow that their consent operated as an order to her, provided she had no intention of becoming a *suttee*, as there is no possibility, according to the general opinion, of a suicide being committed by the direction of others. It is a general practice, that he who intends to die is always dissuaded by his friends. Here the authority of those individuals should be interposed thus far; that when a woman wants to become a *suttee*, they should first forbid her; and when they believe that she is determined to persevere in ascending her husband's pile, and their remonstrances do not meet with her attention, if they consent to the suicide, they cannot be looked upon in the light of murderers. Moreover, if it should be established that they supplied wood and fire, yet it may be contended, that when she did not attend to their dissuasions, it became incumbent on them to supply wood for her burning, with or without her husband's body, as she was then unable to procure the materials for herself. Notwithstanding that the death effected by ascending the pile in this instance, is the means of salvation in the next world, yet this sort of practice of suicide without being certified of the husband's death, is unusual, and disapproved of in this world. In performance of such act, therefore, the actors incurred a slight sin. The person who set fire to the pile will perform two *Chandrayana* penances, and the other who heaped on the wood should do one of those penances; and they are liable to punishment by the ruling authority for their assistance to the *suttee* without his permission. The punishment is, that the person who set fire will be fined with one thousand and eighty *puns* of cowrees, and the other who heaped on the wood with half of that amount."

1823.

Case of RAMDUT and BALGOBIND.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Ram Dut Brahmin of having given fire to Mussummaut Guneshea, and heaped straw upon the pile, and the prisoner Balgobind Brahmin of having prepared wood and other things with a view to Guneshea's becoming a *suttee*, declared the two prisoners liable to *Acoobut*, according to the degree of their respective offences.

By the Court. C. Smith, (second Judge.) "The *suttee* being by the answer of our pundits declared legal, even though the woman did not burn herself upon the funeral pile of her husband, I do not see how the charge against the prisoners of having been concerned in a *suttee* contrary to the *shaster* can be supported. The rules promulgated by the Nizamut Adawlut in the beginning of 1815, certainly declared such a *suttee* to be illegal in the wife of a Brahmin, as Guneshea in this case was; but those rules may not have contemplated—they certainly do not mention—the case of a missing husband with regard to whom the wife is firmly persuaded that he is dead, without knowing where he died, and where his corpse may be. In those instructions, and in the preceding ones issued in April 1813, I find no penalty prescribed for assisting in a legal *suttee* without having given information to the police. I am of opinion, therefore, that the prisoners should be released without punishment. The essence of the charge being, that the prisoners acted illegally, according to their own law, no sentence of punishment can consistently be issued without confirming that part of the charge, and how do this in the teeth of the present *vyuvustha*? I do not think the former orders contemplated the case of a woman burning whose husband was not positively known to be dead; at least I can find nothing in them direct to such a case." W. Dorin, (fourth Judge.) "The fact that these two men assisted in the *suttee* of Guneshea, their absent brother's wife, is clear. He appears to have been a Brahmin, and absent six years; and the wife suddenly says she has dreamed he is dead, and means to burn. There is no intelligence of his death; and, for what we know, he may be now alive. The defendants, in their share of the transaction, seem to have acted under the decided influence of superstition, and from no discoverable motive of private malice. If it was an illegal *suttee*, (as it probably was,) it would, I think, be wrong and impolitic to let them off; though I see no reason why we should bear hard on them. It is in vain to think that sentences of this Court are to put a stop to *suttee*. That must be done, if done at all, by an absolute prohibition from the Government. The *vyuvustha* circulated as a guide throughout the country on the 4th January 1815, (marked No. 5,) declared expressly, that a Brahmin woman could not burn without the body of her husband, though other castes might. The pundits now say the contrary in a *vyuvustha*, containing a strange mixture of nonsense and contradiction. I incline to follow the first *vyuvustha*, and would adjudge two years imprisonment to each." W. B. Martin, (fifth Judge.) "Although I am clearly of opinion that the *suttee* was illegal, and that the considerations stated in the *vyuvustha* recently delivered by the Pundits, are quite insufficient to furnish any justification of the

act of which the prisoners have been convicted, yet, under all the circumstances of the case, and with reference to the probable influence of superstitious notions on their minds, I have no objection to concur in the moderate punishment proposed by the 4th Judge." A sentence of two years imprisonment on each of the prisoners was issued accordingly.

1823. Case of RAMDUT and BALGOBIND.

GOVERNMENT, *against* RUJUB ALI and PITUMBER.

1823. July 4th. Case of RUJUB ALI and PITUMBER.

Charge—EMBEZZLEMENT.

The prisoners convicted of converting to their own use the sum of 2500 rupees, belonging to Government: sentenced, the one to two, and the other to one year's imprisonment.

THE prisoner Rujub Ali was *Gomashta* in the factory of the Commercial Residency of Rungpore, and the prisoner Pitumber was a writer on the same establishment. They were tried at the 2d sessions of 1822, for zillah Rungpore, on the charge of converting to their own use the sum of 2500 rupees belonging to Government. This case was submitted, in consequence of the Judge of Circuit not concurring in opinion with his law officer, who in his *futwa* acquitted the prisoners, the Judge conceiving the charge alleged against them clearly established by most unequivocal evidence.

On the 12th of December 1818, Mr. Barnett, who was then the Commercial Resident at Rungpore, issued an order, directing 2500 rupees to be sent to Bhugbut Ghose, the *Gomashta* at the subordinate silk factory called Bote Maree, to be appropriated in the purchase of *cocoons*. On the same day the money was despatched under the charge of a guard, and received at the factory. The following day the *Gomashta* sent the 2500 rupees back to Rujub Ali by a person named Jowla, and some *coolies*. This money appeared to have been given to Rujub Ali, in consequence of a letter written in Bengallee by Pitumber to Bhugbut Ghose, in which he states: "I return you the receipt you left with me. The remittance is despatched to you under the charge of a guard; but return the 2500 rupees by some Burkundazes of the factory, and be particularly careful that the cash arrives by Monday evening." The letter was very cautiously worded: it bore no date, and the expressions made use of were sufficient to excite a great deal of suspicion that the transaction was by no means fair and honest. With respect to the receipt alluded to in the Bengallee letter, the death of Bhugbut Ghose precluded the possibility of ascertaining its real nature, and why it was given and left with Pitumber. This was a point which could not be cleared up, but which did not in the slightest degree change the impression in the Judge's mind, of the guilt of the prisoners. Rujub Ali asserted, that Bhugbut Ghose borrowed from him 1500 rupees, which he lent him on account of Mr. Barnett, and he received back his money. Pitumber acknowledged having written the letter to Bhugbut Ghose, and

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stated, that he lent him 500 rupees, of which sum he borrowed 300 from the treasurer attached to the Commercial Residency. The treasurer, in his deposition, disclaimed any knowledge of the business, and of the loan of 300 rupees to Pitumber.

It appeared, that Bhugbut Ghose gave in a petition to the Board of Trade, setting forth, that Rujub Ali and Pitumber had converted to their own use the sum of 2500 rupees of Government's money, a copy of which was transmitted to Mr. Smith, the late Resident, with a view to his enquiring into the truth or otherwise of the circumstances therein stated. What enquiries were made by Mr. Smith into the abuses said to have existed, or whether he made any at all, did not appear; but on the 12th of July 1821, each of the prisoners presented to Mr. Smith a petition, by way of reply to Bhugbut Ghose's charges; stating, that Bhugbut Ghose was indebted to Mr. Barnett a considerable sum of money on account of tobacco; but there was no mention of the loan of 2500 rupees from Rujub Ali, or the 500 rupees from Pitumber. In the petition of Bhugbut, they were clearly and distinctly accused of taking 2500 rupees of Government's money, and on this point both prisoners were perfectly silent; and it was not until the investigation into the transaction by Mr. Nisbet, and the examination of several persons, (who stated that the remittance of 2500 rupees was dispatched from the sudder factory, and received at the factory of Bote Maree, and from thence sent to Rujub Ali, and received by him,) that they adduced the story of the loan. There was another circumstance of a suspicious nature worthy of being noticed, which was, that during the time Mr. Nisbet was making the investigation into the business, Rujub Ali deputed a person named Gooroodoss Mittur to negotiate with the servant of Bhugbut Ghose for the purchase of his papers, with whom Bhugbut Ghose had left them: and after several communications between the agent of Rujub Ali, who offered 700 rupees for them, and the servant of Bhugbut Ghose, which lasted for three days, the affair terminated by the latter saying he had been robbed of the box which contained them.

"Admitting," the Judge of Circuit observed, "that Bhugbut Ghose borrowed from Rujub Ali 2500 rupees, and from Pitumber 500 rupees, the money dispatched from the sudder factory clearly belonged to Government, and this money was sent to and received by Rujub Ali. Pitumber filed a receipt, when examined by the Magistrate, for 3000 rupees, and attempted to prove that this was the receipt alluded to in his letter; but how it came into his possession, when it was the property of Bhugbut Ghose, who would most probably have destroyed it, he could give no satisfactory explanation. The fact was, that Mr. Barnett carried on a private trade while he was Resident at Rungpore, and this receipt might have been for money advanced on account of tobacco, which took place on the 25th December 1818, whereas the remittance made to the factory at Bote Maree was on the part of Government, to purchase *cocoons*, as was clearly proved by evidence; and the *chulan* accompanied it, dated 12th December 1818, the receipt for which bore the same date, and was returned to the office of the Commercial Resident. He thought,

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therefore, that Rujub Ali was deserving of exemplary punishment, and that Pitumber, who acted under his orders throughout, was also deserving of punishment, as, though certainly less culpable, there being no proof of his participation in the money plundered from Government, he would hardly have taken such an active part in the affair, unless he had derived some pecuniary advantage.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoners Rujub Ali and Pitumber of employing the public money in their own concerns, declared them liable to *Tadeeb* for the offence; and the Court of Nizamut Adawlut (present C. Smith and W. B. Martin) sentenced the first prisoner to two, and the second to one year's imprisonment, as they were of opinion, that, though the case, from the death of Bhugbut Ghose, and absence of papers, was involved in some obscurity, yet that the fact of Rujub Ali's having received on a private account the sum of 2500 rupees of the public money, and of Pitumber's having been active in procuring him that remittance, appeared to be sufficiently established.

GOVERNMENT, *against* SURNAM TEWARRY.

1823.
July 16th.
SURNAM TEWARRY'S case.

Charge—MURDER.

The burning of a Brahminee woman on a funeral pile different from that of her husband, having been declared illegal; her father-in-law, who assisted at the *suttee*, sentenced, under all the circumstances of the case, to one year's imprisonment.

THE trial of the prisoner came on at the 1st sessions of 1823, for zillah Goruckpore. This was a case of irregular *suttee*, in which the woman, Dilkoowaree, being of the Brahminical tribe, was burned, immediately on receiving intelligence of her husband's death, indeed on the same day that he died, but without his body, his obsequies having been performed where he died. She was about sixteen years of age, and was taken from her own father's village, where she lived, to that of the prisoner Surnam Tewarry, who was father of the deceased husband. He prepared the funeral pile; and after she had ascended it, he placed wood all around her. The Darogha, a Hindoo, was present, and instead of interfering to prevent, gave him permission to burn the woman; and he then set fire to the pile. It appeared that her husband died at a village about two koss from the place where the *suttee* occurred. There were only two witnesses, Shunker Tewarry and Roochye Tewarry, brought forward, who concurred in the above facts. The defendant urged in his defence that he endeavoured to dissuade the woman from burning; but there could be no doubt that he fired the pile wilfully, with the intention of causing her death.

The law officer of the Court of Circuit gave a *futwa*, barring *Kissas* and *Deeut*, but declared the prisoner liable to punishment by *Seasut*. In referring the case, the Judge of Circuit observed, that the *suttee* was quite irregular; that the case should not go unpunished; but that the permission of the Thanadar to go on with the ceremony, and the

1823. absence of malice prepense, removed the worst features of the crime. He added, that imprisonment, for not less than four years, with or without labour, might be an appropriate punishment.

SURNAM TEWARRY'S case.

The *futwa* of the law officers of the Nizamut Adawlut was similar in effect to that of the Court below.

By the Court. C. Smith, (second Judge.) "I do not see that the prisoner has violated the usage of the country, which our *vyuvustha* declares to be paramount to the letter of the law. To attend to the *futwa* in these cases any further than as it finds the fact, is perfectly absurd. The charge is, that the prisoner acted contrary to the *shaster*. If then the law of the Mooftees is inapplicable, if what has been done is consonant to usage, and if usage is superior to the naked doctrine of the Hindoo law, as that law itself acknowledges, how has the prisoner offended, and by what code would you punish him? To punish men with imprisonment for two years, or five, or any other term, for having violated a circular order not yet reduced into a printed Regulation, (see the preamble to Regulation XLI. 1793,) appears to me positively illegal; and I question, whether prior to this month of June, such a punishment was ever awarded by the Nizamut Adawlut. It is quite obvious, that a circular order can have no validity at all, but as it confirms and enforces the existing law. If it contradicts the law as it is, or promulgates any new law, it is in itself fundamentally illegal, and cannot therefore be binding upon the community. I am for acquitting the prisoner."

J. Shakespear, (third Judge.) "I concur in the acquittal, as no violence appears to have been used towards the woman, and the prisoner was probably not aware that he was violating any law. I differ, however, from the 2d Judge in regard to the wording of the sentence, and doubt whether we ought, on the *vyuvustha* of our Pundits, to recognize the usage as paramount to the letter of the law. The *vyuvustha* too is, I apprehend, at variance with the *vyuvustha* before circulated on this subject."

W. Dorin, (4th Judge.) "I do not agree with the 2d or 3d Judges. I think the question whether the *suttee* was an illegal one or not, (a Brahminee woman burning without the body of her husband,) is to be judged of by the *vyuvusthas* obtained by this Court some years back, and circulated for general guidance, as containing the ascertained law on the subject. We are not, I think, to be taking new *vyuvusthas* now, on the points then considered as the law, after due enquiry. One of those *vyuvusthas* declared a *suttee*, under the circumstances of that in question, to be illegal. I therefore think the defendant in this case liable to punishment, for having assisted at an illegal *suttee*. I would not bear hard on him, though I think it would not be politic or proper to let him off entirely. It is to be observed in his favour, that the police Darogha, who, according to the promulgated orders, should have stopped this *suttee*, was present, and did no such thing, nor told the defendant it was against the promulgated rules. The Magistrate has called on him to answer for it. Still I hold it to be the law, and the defendant's ignorance of the law no plea."

1823.
SURNAM TEWARRY'S case.

W. Leycester, (chief Judge.) "I agree with our fourth Judge in thinking the act of the prisoner a proper object of punishment. In doing so, we are not acting under any circular order; and in not punishing, we should be acting directly contrary to section 16, Regulation XXVIII. of 1803. I would suggest a moderate punishment: and as there are two Judges for acquitting, and two for convicting, the case must go before a fifth Judge."

W. B. Martin, (fifth Judge.) "It appears to me, that by the criminal law of the country, the fact of assisting at an illegal *suttee* is punishable at the discretion of the ruling power. Under what circumstances a *suttee* shall or shall not be considered as illegal, is a question for the solution of which recourse must be had to the authorities on Hindoo law. The law officers of the Nizamut Adawlut have accordingly described the nature of those circumstances, and have distinguished the predicament which constitutes a legal *suttee* from those which deprive it of that character, and render it unwarranted by the written law. The Nizamut Adawlut have circulated the opinions so delivered by the law officers for the guidance of the local authorities; and I think that we are bound to adhere to them in all cases of this nature which may be referred to us for adjudication. Upon these principles, I am of opinion, that the prisoner Surnam Tewarry is a proper object of punishment; but as there are circumstances of extenuation in his case, I would suggest the limitation of it to imprisonment without labour for the period of one year."

The fourth Judge concurring, a sentence to this effect was issued accordingly.

RUMZANEE,
against
KOOTTUB and MUNSAUD.

1823.
July 31st.
Case of KOOTTUB and MUNSAUD.

Charge—ATTEMPT TO POISON.

THE prisoners Koottub and Munsaud were charged with compassing the death of Rumzanee, by preparing poison, and endeavouring to cause it to be administered to him, and were tried for that offence at the 1st sessions of 1823, for zillah Goruckpore. The prisoner Koottub was found guilty by the *futwa* of the law officer of the Court of Circuit, of compassing the death of Rumzanee, by preparing poison, and endeavouring to cause the same to be administered to him; and the prisoner Munsaud of being an accessary, and privy to the crime. The cause of enmity appeared to have been, that Rumzanee was about to be married to Koottub's sister-in-law. Koottub's wife had lately died, and he was anxious to be married to her sister himself. He accordingly prepared the poison, and endeavoured to persuade the witness Mussummaut Chunduneea to admi-

One prisoner was convicted of having prepared the poison of *dhuttoora* for the purpose of administering it to his rival, with a murderous intent: sentence, 10 years

1823.

Case of KOOTTUB and MUNSAUD. imprisonment.

nister it to Rumzanee, by the offer of four rupees. She, however, instead of doing so, gave information at the Thana, in consequence of which the parties were apprehended, and confessed their guilt at the Thana and before the Magistrate, though Koottub disclaimed an intention of killing, and denied that *dhuttoora* was calculated to produce death. The confessions before the Magistrate were proved before the Court of Circuit, and the evidence of Musst. Chunduneea clearly established the fact. The Judge of Circuit concurred in the *futwa* of his law officer, and recommended that Koottub should be imprisoned for life, and Munsaud for seven years. The Judge added, that the poison being a vegetable *(dhuttoora)*, did not admit of being proved by tests, except by a most delicate chemical process, which, perhaps, no one in India was capable of conducting; but that the peculiar vegetable alkali, which that plant contained, and which was the poisonous part of it, had been lately separated in Europe.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Koottub of preparing sweetmeats mixed with *dhuttoora*, and with having sent them for the purpose of being administered to Rumzanee with a view to produce a temporary derangement of his intellects, declared him liable to *Tazeer* for the offence; and acquitting Munsaud of the charge, declared him entitled to his release.

By the Court. C. Smith, (second Judge.) "The sweetmeats are not produced, nor is it established what was in them. The prisoner Koottub says it was *dhuttoora*, but that *dhuttoora* is not mortal; and that his intent was not to kill his rival Rumzanee, but to produce a temporary derangement of his faculties, so as to prevent his marriage with his (the prisoner's) sister-in-law, to whom the prisoner (his wife being dead) was desirous of being united in marriage. I would not sentence him to more than two years imprisonment. Munsaud's privity to the materials in the four sweetmeats which were to be given to Rumzanee not being sufficiently established, I agree with the law officers in thinking he should be released."

By the chief Judge, (W. Leycester). "I think the proposed sentence of Koottub too lenient, and that there is sufficient evidence to convict Munsaud. There is a clear conspiracy established to poison Rumzanee, detected, as often happens, by one of the conspirators (Chunduneea) giving information. The only plea in favour of Munsaud is, that he denies all knowledge of the sweetmeats containing poison. Chunduneea, however, swears she received them through Munsaud; that she knew that they were poisoned: and the confession of Koottub states, that having put poison into four, he had lodged them and ten others unpoisoned with Munsaud; and telling all this to Chunduneeea, he sends her to Munsaud to get the said articles, with a view to their being administered. Chunduneea also swears, that she received the four poisoned sweetmeats from Munsaud, distinct from the others. This appears sufficient to justify, and compel to a conviction on strong presumption. I would convict both the prisoners of having conspired together to administer poison to Rumzanee

1823.
Case of Koottub and Munsaud.

with a murderous intent, and sentence them each to ten years imprisonment."

By the third Judge, (J. Shakespear.) "I do not think the evidence against Munsaud is sufficient. I concur, therefore, with the second Judge in directing his acquittal and discharge. With respect to Koottub, I concur in his conviction; but am of opinion, with the senior Judge, that a sentence of two years would be too lenient, and that he ought to be sentenced to ten years imprisonment."

W. B. Martin, (fifth Judge.) "I do not think that the evidence against Munsaud is sufficiently strong to justify his conviction. Koottub acquits him of all knowledge of the mode in which the sweetmeats were prepared; and there is only the evidence of Chunduneea to prove that Munsaud was privy to their having been compounded of poisonous ingredients. Her testimony is indeed verified by the correspondence between Koottub's confession and the information which she lodged against him at the Thana. Being however unsupported, in its relation to Munsaud, by any other admitted fact than that of her having received the sweetmeats from his hands, it does not appear to me to be conclusive of this prisoner's guilt. I am, therefore, for acquitting Munsaud, and, in concurrence with the opinions of the chief and third Judges, for sentencing Koottub to imprisonment for ten years."

In conformity, therefore, with the concurrent opinion of Messrs. Shakespear and Martin, the prisoner Koottub was sentenced to ten years imprisonment; but Munsaud, the other prisoner, was acquitted and discharged.

GOVERNMENT, *against* SHEO SUHAI.

Charge—Murder.

1823.
Aug. 11th.
Sheo Suhai's case.

The prisoner convicted of assisting at an illegal *suttee*. Sentenced, under the circumstances of the case, to 3 years imprisonment.

This trial came on at the 1st sessions of 1823, for zillah Goruckpore. The prisoner in this case was charged with wilful murder, in having burned alive Mussummaut Jhooneah, 12 years of age, on the 24th February 1823, on a funeral pile, without the corpse of her husband, who had died a year and a half before that time. Oudanee, witness for the prosecution, deposed, that one day in the month of Phagoon, he saw Jhooneah ascend the *chitta*, and Sheo Suhai, the prisoner, with the assistance of two others, shut it up on every side with wood, after which he fired it; that she was twelve years old, and a niece of the witness; that the deceased was burned with part of the wearing apparel, and the horoscope of her husband, who had died a year and a half before she was burned. Gobind deposed, that in Phagoon, (he did not remember the date,) a short time after sunrise, Oudanee and others prepared a *chitta*, or funeral pile, which Jhooneah ascended. Sheo Suhai shut up the *chitta* on one

1823.

SHEO SUHAI'S case.

side, after it had been previously closed on the other three sides. When she began to curse the prisoner, he threw fire upon the *chitta* from a distance. There were no *urhur* sticks in the *chitta*. Considerable delay was made for the arrival of the Darogha; but as he did not arrive, she was burned. Witness went to see the *show (tumasha)*. The place is three miles from the Thana. The girl was about twelve years old, and her husband had been dead a year and a half. The prisoner, before the Court of Circuit, acknowledged his confession before the Magistrate, but said he was not in his senses at the time he made it. The witnesses to it, however, Gopal Loll and Hurnam Singh, proved on oath, that he was in complete possession of his faculties. This confession before the Magistrate recited, that Jhoonea was the wife of his younger brother; that she resided at her father's house, between two and three miles from the village where he himself lived. He heard she was going to burn, and went to the place. At that time Jhoonea had left the house, and gone to the north side of the village, where the wood was piled, and asked him, the prisoner, for fire. Prisoner said he would not give fire till the police officer came. She again urged her demand. Prisoner begged her not to burn, and said he would maintain her; on which she began to curse him, and said, "Why do you injure my future state?" He then put fire in her hand; she lighted the straw, and was burned. She was twelve years old. Prisoner endeavoured to prevent her from burning, but gave fire, because she began to curse him. He did not lay hold of her, because he belonged to another village. He did all he could to prevent her, but she would not mind him. His defence before the Court of Circuit was very different. He said he had gone to the house of the girl's father with a coloured petticoat (as a present), and to bring her away. Oudanee, her uncle, said he would not let her go, as it was an unfortunate year. Ten days after this, Oudanee sent for him: he went there, and found drums beating; and, to the north of the village, there was a pile prepared, and mats put up round Oudanee's house to keep Jhoonea from coming out. He went there, and sat down to prevent her from coming out till the Darogha should come, and shortly after he saw her out of the house. On enquiring how she got out, he was told by Oudanee, that he had taken her out of a window. Prisoner then went to the *chitta*, and tried to dissuade her from burning; but she persisted, and he begged her to wait till the Darogha came. When he went near her, she forbade him to approach. He denied giving fire, and said, Oudanee threw fire on the *chitta*. Koorkoot, a witness on the part of the defence, stated, that he saw the *suttee*; went there a short time after sunrise; saw the *chitta* ready. Jhoonea ascended the pile, and demanded fire, which the prisoner gave from a distance into her hand, and with which she lighted the *chitta*. He gave her fire on the north side. He saw this from about two *biswas* distance, and there were not above three or four persons present. Jham, also a witness for the defence, went to Mehodeh, at about one *puhur* of the day; did not know why the prisoner went there. Jhoonea ascended the *chitta*, and began to curse the prisoner, on which he put fire into her hand, with which she lighted the pile, and was burned.

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SHEO SUHAI'S case.

Prisoner gave fire on the east side, but witness did not see on what side Jhoonea lighted the pile.

In referring the case, the Judge of Circuit observed, that the *suttee* was altogether irregular, for two reasons; first, the girl being not more than ten years and a half old at the time of her husband's death, the marriage could not have been consummated; and, secondly, because she was not burned with the corpse. That, by the Hindoo customs, the only person who could apply fire to the pile was the prisoner, being the nearest relation of her deceased husband then present: therefore his pretence of endeavouring to dissuade her was perfectly futile. Had he refused fire, there could have been no *suttee:* and for the same reason, it was perfectly ridiculous to urge, that he could not prevent it from occurring before the Darogha's arrival. He also observed, that the girl was confined within the *chitta*, so that she might not escape when she felt the flames. That this was a very aggravated case of irregular *suttee;* and that, were the perpetrator of the murder to be put to death in a similar manner, he would only meet his desert.

The *futwa* of the law officer of the Court of Circuit declared the prisoner guilty of wilful murder, but *Kissas* barred, in consequence of the permission of the woman to fire the pile. In the opinion of the Judge of Circuit, he was clearly guilty of wilful murder; but as he did not believe that the woman's consent continued after she felt the flames, and as egress from the *chitta* was then prevented by the previous act of the prisoner, and as it was perfectly clear that the *suttee*, being irregular, would have been prevented by the arrival of the police officers, and was on that account hurried on, he trusted that the Court would not award a less punishment than fourteen years imprisonment with hard labour and irons. The Pundit of the Nizamut Adawlut being consulted in this case, declared, that any woman above ten years old might become a *suttee;* and that it was allowable to any woman, not being of the Brahminical tribe, to burn on a different pile from that of her husband; that the deceased woman, in this instance, was justified in performing the sacrifice, on hearing of the death of her husband, a year and a half subsequent to that occurrence.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner Sheo Suhai Koormee of a misdemeanor, in burning his brother's wife at her request, declared *Deeut* and *Kissas* to be barred by the consent of the deceased to the act, and the prisoner to be liable to discretionary punishment by *Acoobut*.

By the Court. C. Smith, (second Judge.) "I think the whole of this commitment and trial at once absurd and unjust. It appears to me to be a perfectly regular *suttee*, and the prisoner to be altogether blameless. I am of opinion that the prisoner should be acquitted."

J. Shakespear, (third Judge.) "I do not concur in the opinion expressed by our 2d Judge. The age specified in the Circular Orders, which are founded on the *vyuvusthus* of our Pundits, is 16 years. This

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SHEO SUHAI'S case.

girl was only 12 at the time of the *suttee*, and her husband had been dead one year and a half. I do not believe the Pundits know much about the signs of puberty, or that any child of 10 years old could show such signs. I think the prisoner guilty, and that he should be punished by some period of imprisonment not exceeding seven years."

W. Dorin, (fourth Judge.) "There seems to have been another ground of illegality in this *suttee* besides the widow having been under 16 years, viz. that she burned without the body of her husband, who had been dead a year and a half, (apparently in consequence of some sudden impulse or freak,) and not on receiving intelligence of his death while absent, (vide *vyuvustha* circulated 25th June 1817.) There seems strong presumption that his death was known at the time it happened. The promulgated orders have stated sixteen as the age below which the law does not allow a widow to burn. The confession was irregularly taken in the Foujdaree, which should be remarked. The mode adopted is in express opposition to the Circular Orders of the 12th December 1809. The confession purports to be before the assistant, but the witnesses on the trial declare it was taken before the Serishtadar in the Serishta. This practice is highly objectionable. I agree to pass sentence in this case, for assisting at an illegal *suttee*, but without putting it on the ground of non-age, at least not specifically so. Three years imprisonment seems to me enough."

The fifth Judge (W. B. Martin) observed, that the widow having been under sixteen years of age, and the *suttee* having been, therefore, according to the existing rules, irregular, he saw no reason for declining to specify that circumstance distinctly, as the ground of adjudging the prisoner to imprisonment for the term of three years. But the third Judge concurring in opinion with the fourth, sentence was issued accordingly.

1823.
Aug. 11th.
GUNGA DOOBE'S case.

GOVERNMENT,
against
GUNGA DOOBE.

Charge—MURDER.

Prisoner convicted of assisting at the *Suttee* of his brother's wife, she being under the prescribed age,

THIS trial came on at the 1st sessions of 1823, for zillah Gorucknpore. The crime alleged against the prisoner was that of having burned alive Mussummaut Kubootree, a girl twelve years of age, the widow of Purbhoo Doobe. The first witness, Dusseen, deposed that he saw the whole affair; that in the month of Kooar, on the festival of *Anunt*, he saw her burned with the corpse of her husband, who was adult; that the prisoner in vain endeavoured to dissuade Kubootree from burning; but that he ultimately fired the pile, which

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GUNGA DOOBE'S case.

was square, and that wood was piled round her after she had ascended it by the prisoner. Doonee Doobe, the grandfather of Purbhoo Doobe, deceased, deposed that he did not remember when the deceased was married, nor how old she was; and that when his grandson died, she was burned with him: he added, that he did not remember deposing that she was twelve years old at the Thana, but that he knew she had slept with her husband; that Gunga Doobe fired the pile, and that ten or twelve persons were present.

and having sacrificed herself, not when she heard of her husband's death, but one year and a half afterwards. Sentence, three years imprisonment.

Dhoom Singh, Rambuksh, and Hyder Ally proved the prisoner's confession. They stated, that it was not taken before the Magistrate or his assistant, but in the office. It was, however, confirmed again before the Magistrate or his assistant, on the 29th May, the officers of the Court who took the confession being in attendance. Ameer-oollah, the *Serishtadar*, proved the confession, which was taken before him by Luchmun Pershaud in the office. Luchmun Pershaud proved that he took the confession. The confession of the prisoner was to the effect, that Kubootree was twelve years old, and the wife of his younger brother; that he tried to dissuade her from burning in vain; that she was burned while the *Gorait* went to the Thana; and that he fired the pile, because she began to curse him for his refusal.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of burning alive Kubootree, a girl twelve years old, but declared *Kissas* barred on the ground of the deceased's permission of the act of firing the pile. The Judge of Circuit concurred in opinion as to the prisoner's being guilty of wilful murder, but differed as to the circumstance which the law officer brought forward to bar *Kissas*. He observed: "The permission to light the pile can only bar *Kissas*, in as much as it infers the consent and willingness of the party killed to be put to death; but it is not to be imagined, that after the fire had reached the woman, she was still consenting to such a horridly painful death. Moreover, it appears in evidence, that wood was heaped round her after she had ascended the pile; and this would prevent her from leaving it, when she felt the fire, which we are compelled to believe she would have done, if she could. Moreover, the circumstance of hurrying over the ceremony before the arrival of the Darogha, who might have delayed or prevented it, argues a predetermination to burn the woman, which fully contradicts all the alleged dissuasions of the prisoner." On these grounds, he recommended that the sentence should amount to at least seven years imprisonment with labour.

The *futwa* of the law officers of the Nizamut Adawlut declared the prisoner Gunga Doobe convicted of a misdemeanor, in having assisted at the *suttee* of his brother's wife, and liable to discretionary punishment by *Acoobut*. The second Judge of the Nizamut Adawlut put a question to the Pundits of the Court, as to the legality or otherwise of the sacrifice, supposing the girl to have been not more than twelve years old; to which they answered, that the sacrifice was perfectly legal, the signs of puberty generally appearing about the tenth

1823.
GUNGA DOBEE'S, case.

year. On the receipt of this opinion, the second Judge observed: "I think in this case, as I thought in that of Sheo Suhai, that the commitment and trial are at once absurd and unjust; and I am of opinion, that the prisoner should be released without punishment."

J. Shakespear, (third Judge.) "I am of opinion, that the prisoner in this case is deserving of punishment for burning a girl of 12 years of age. The circumstances under which the *suttee* was performed are less reprehensible than those which are proved in the separate case of Sheo Subai. I think, therefore, that any sentence not exceeding three years imprisonment will be proper."

W. Dorin, (4th Judge.) "The ground of imputed criminality in this case was, that the widow was only 12 years of age, at whose *suttee* the defendant assisted. But it is remarkable, that the fact of her age being 12, is not at all satisfactorily proved in evidence: all the evidence to it on the trial is an indirect allusion in the Foujdaree confession, by no means a plain admission of the age. One witness (Doonee) on the trial, says he does not know what her age was, and does not recollect having stated it at 12 before the Darogha. The Darogha, in his report, mentions this witness to have stated it at 12, (if his report be now as he sent it in;) but it will be observed, that the word has been subjected to erasure or alteration, and looks doubtful. Therefore, before I could assume her age to have been only 12, I should require further proof to that fact; especially as this is the only ground of imputing a crime to the defendant. Sixteen has been assumed by the Court, in the instructions to police Daroghas, under date the 5th December 1812, (see page 78, Nizamut Circular Orders,) as the age below which *suttee* is illegal. But I do not find that any *vyuvustha* has expressly stated this age. The *vyuvustha* (vide page 88) states *under the age of puberty*, and this the Court have construed to be 16. According to the digest, 16 does seem the age assigned as the term of Hindoo civil minority; but if maturity of body be intended, it may be doubted whether, in this country, women are not mature before that age. I do not find that the prohibitions have been proclaimed, and therefore I look on them only so far binding as they may be considered good Hindoo law; and I would take to be good law every thing the Court then considered as such, under the sanction of a *vyuvustha*, notwithstanding any thing the Pundits may now say to the contrary. As to the age of 16, I have no doubt as to the policy and propriety of continuing to prevent *suttees* of females below that age, where the police can do it; but the question now is, whether assisting at such a *suttee* is to be punished as a crime in Hindoo law. I will agree either to acquit in this case, (which will get rid of the difficulty,) or to send for further evidence, if a majority of the Court deem it desirable. It was Mr. Colebrooke, I understand, who inserted 16 in the Circular Orders. There is an opinion by the Pundit of the Supreme Court, apparently agreeing with that now given by our Pundits. In the regulation proposed by Mr. Harington, he assumed 16 as the age. See the draft of it on our records." By the fifth Judge, (W. B. Martin.) "The illegality of the *suttee*, and conse-

1823.
GUNGA DOOBE'S, case.

quently the commission of the offence charged against the prisoner, depend on the doubtful fact of the precise age of the deceased widow. With regard to this fact, further evidence ought, I think, to be required: but if the result of that evidence should prove it not to have exceeded the age specified in the charge, I should be inclined to concur in the sentence proposed by the 3d Judge; because, independently of the limitation of the age of 16 in the Circular Orders of the Nizamut Adawlut, it appears to me to be unreasonable to suppose, that a female at the tender age of 12 years can be capable of the discernment, and of exercising that full maturity of judgment, which the nature of the ceremony, no less than the present construction of the law, apparently requires as the condition necessary to justify the immolation."

The age of the deceased woman having subsequently been ascertained not to have exceeded twelve years, the following sentence was passed, (present J. Shakespear and W. Dorin.) "The Court concur in the conviction; and, deeming the prisoner guilty of having assisted at an illegal *suttee*, the widow (who was very young) having burned without the body of her husband, who was known to have been dead one year and a half, and not on receiving intelligence of his death while absent; under all the circumstances, the Court sentence the prisoner to be imprisoned, with labour, for three years, from this date. The Court observe, that the Foujdaree confession of the prisoner, purporting to have been taken before Mr. Currie, the assistant to the Magistrate, is declared by witnesses on the trial to have been taken before one of the native officers; which, supposing it true, is highly objectionable, and contrary to the Circular Orders of the Nizamut Adawlut bearing date the 12th December 1809. The Magistrate of Goruckpore will submit an explanation on this point from his assistant, with any remarks he may himself have to offer on the subject."

MUSST. PANEE,
against
URJOON BISWAL and others.

1823.
Sept. 17th.
Case of URJOON BISWAL and others.

Charge—MURDER.

It is not competent to a Magistrate to commit individuals to take their trial for whom he had

THE prisoners Sooruth Biswal, Urjoon Biswal, and Ugnee Mullick, were charged with murder, and tried for that offence at the 2d sessions of 1823, for zillah Cuttack. At the recommendation of the Magistrate, and in consideration of the proceedings held in this case, the Nizamut Adawlut authorized a conditional offer of pardon to two persons in this case, named Madh Mullick and Kunhai Biswal. These persons having, however, before the Magistrate, in their second examination, denied any knowledge of the circumstances of the mur-

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Case of URJOON BISWAL and others. obtained a conditional pardon from the Nizamut Adawlut, without reference to that Court; and being so committed, the Judge of Circuit is competent to renew the offer of pardon.

der, they were committed for trial with the other prisoners; but on the conditional offer of pardon being explained to them by the Commissioner upon their trial, they expressed their readiness to disclose upon oath the facts within their knowledge relative to the murder, on the condition of receiving a full pardon; and their evidence was accordingly taken.

The *futwa* of the law officer of the Commissioner's Court convicted the prisoner Sooruth Biswal on violent presumption of the crime of wilful murder, and also convicted the prisoners Urjoon Biswal and Ugnee Mullick on the same grounds, of aiding and abetting in the perpetration of the murder; and declared the whole of the prisoners liable to *Seasut*. In referring the case, the Commissioner observed, that as the prisoners Urjoon Biswal and Ugnee Mullick were the dependants of Sooruth Biswal, and acted by his order, justice would perhaps be satisfied in this case by a sentence of imprisonment in transportation for life, of those convicts; but that the prisoner Sooruth Biswal should be sentenced to suffer death. He added, that the persons named Madh Mullick and Kunhai Biswal, having fulfilled the conditions of the pardon, the certificate prescribed by section 5, Regulation XIV. 1810, should be forwarded for, and delivered to them by the Magistrate.

By the Court of Nizamut Adawlut. C. Smith, (second Judge.) "The evidence of Madh Mullick and Kunhai Biswal being so important in the case, it seems requisite in the first stage to determine whether the Commissioner was competent, under the order of the 19th of March last, without further reference to this Court, to take the evidence of these two persons as witnesses, though they seem clearly to have declined the proffered pardon when offered to them by the Magistrate, and on that account to have been committed to take their trial before the Court of Circuit. I think he was not, and that their depositions, as they are now circumstanced, cannot be received as legal." W. Leycester, (chief Judge.) "On the subject of the competency of the Commissioner to take the evidence of Madh and Kunhai, I am of opinion, that he was competent. The only error which has occurred was on the part of the Magistrate in committing them, which he was not competent to do without the order of the Nizamut Adawlut. I agree in the convicting *futwa*, and would pass sentence of death against Sooruth, and of perpetual imprisonment at Allipore against Urjoon and Ugnee." The third Judge (J. Shakespear) fully concurring in the above opinion, sentence was issued accordingly.

1823.
Sept. 27th.
EKADUSSEE KANDE'S case.

GOVERNMENT, *against* EKADUSSEE KANDE.

Charge—MURDER.

THE prisoner was charged with the wilful murder of a boy named Hurria, and robbing him of his ornaments. His trial came on at the Cuttack sessions, on the 30th of June 1823. The Commissioner concurred in the *futwa* of the law officer, which convicted the prisoner of the crime charged, on violent presumption, and declared him liable to exemplary punishment by *Seasut*: but it appearing that the prisoner (who on his trial pleaded not guilty) was induced by promises of release to confess the murder, and discover the ornaments taken from the body of the deceased; and that his confession was not taken by the Darogha at the police Thana, but by the Thana Jemadar, and at the village where the prisoner was apprehended; and it likewise appearing, that on his arrival at the Thana, notwithstanding the Darogha was present, no further examination of the prisoner took place; nor was any question there put to him, respecting his confession before the Jemadar; that moreover no reason was stated, as required by clause 3, section 11, Regulation XX. 1817, for the confession of the prisoner having been taken in the Moofussil, and not at the Thana; and the prisoner's guilt having thus been established by means prohibited by clause 3, section 5, Regulation IV. 1810, and clauses 2 and 3, section 19, Regulation XX. 1817; the Commissioner was of opinion, that the prisoner should not be sentenced to suffer death, but recommended that he should be sentenced to imprisonment in transportation for life. It should be observed, he added, that the person who by promises of release induced the prisoner to confess the murder, was not an officer of police, but the head man of the village of which the deceased and the prisoner were inhabitants, and that no police officer was present when such illegal means were employed to discover the property.

A confession made voluntarily before a police officer, not held to be invalidated by the fact of a former confession made to a person not being a police officer under promise of release, nor by the non-observance of the rule contained in clause 3, section 19, Regulation XX. 1817.

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoner Ekadussee Kande of the wilful murder of the boy Hurria for the sake of his ornaments, declared him liable to suffer death by *Kissas* for the crime.

By the Court, C. Smith, (second Judge). "It is clear, that the prisoner has committed a foul and cruel murder. Whatever may have led to the confession drawn from him by Gobind Doss, it does not appear that any thing improper took place before the Jemadar of Gope to induce the prisoner to confess. To that confession, therefore, the Regulations cited by the Commissioner do not apply. Under the information afforded to the Jemadar by Gobind Doss, I think he was perfectly right to record the prisoner's answer without delay. I am of opinion, that the prisoner should be adjudged to

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suffer death." W. Leycester, (chief Judge). "I would not in this case go beyond the perpetual imprisonment recommended by the Commissioner. I even think going that length somewhat questionable. Had it not been for the property found, I would have acquitted, disbelieving his confession, as not being free and voluntary. The finding the said articles might merely suggest privity as an accessary. I would not object to limit the imprisonment to 14 years." J. Shakespear, (third Judge.) "I consider the guilt of the prisoner to be fully established by the evidence; and being of opinion, that the irregularity noticed by the Commissioner does not in any respect vitiate that evidence, or afford any reasonable ground for mitigation, I concur with the 2d Judge in a sentence of death." The prisoner was executed accordingly.

1823.
Nov. 24th.
SHEIKH MEERUN'S case.

MUSSUMMAUT BUMAN, *against* SHEIKH MEERUN.

Charge—RAPE.

A prisoner having been acquitted by a Judge of Circuit, on very unsatisfactory grounds, of the charge of rape, the Court, on revision, did not touch the acquittal, but recorded their disapprobation of the sentence.

THE prisoner Meerun was tried, at the first sessions of 1823, for zillah Tirhoot, for a rape committed on the body of a girl named Kulmee, aged about ten years. The prosecutrix, mother of the girl, deposed, that her daughter was proceeding to sell butter milk, one day in the month of Jeth (the date she did not recollect) to a neighbouring village, in company with a girl named Luchmunia, about her own age, when the prisoner attacked her, threw her down, and by force had carnal knowledge of her person. He was charged also with robbing her of her necklace. The girl Luchmunia, who was the only eye-witness to the occurrence, corroborated the assertion of the prosecutrix. Luchmunia immediately ran back to the village, and alarmed the brother of her companion, by whom and others the girl was found in a state which unequivocally demonstrated the treatment she had received. The prisoner pleaded not guilty, and he was acquitted by the *futwa* of the law officers of the Court of Circuit, which was to the following effect.

"The accusation against the prisoner, of having committed a rape on the daughter of the prosecutrix, and robbing her of her necklace, is not legally established, because the defendant denies, and there is not sufficient testimony to prove the charge. It is evident, that the depositions of Kulmee and Luchmunia are wholly inadequate as proof; and there is no circumstantial evidence corroborative of their evidence, to bring the charge of rape home to the prisoner. He is therefore entitled to his release." On this *futwa* the Judge of Circuit acquitted the prisoner; but the Court of Nizamut Adawlut,

observing in the statement of acquittals, his remarks on the case, that "the only evidence to the fact was that of the girl, upon whom the rape was said to have been committed, aged about nine years, and that of another girl about the same age, which was not considered sufficient for conviction," and not deeming this remark satisfactory, called for the proceedings in the case.

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The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of committing a rape on the person of the prosecutrix's daughter, a girl ten years old, and declared him liable to *Tazeer* for the offence.

The Court of Nizamut Adawlut, (present C. Smith and J. Shakespear,) concurred in the *futwa*, but did not deem it expedient to alter the sentence passed by the second Judge of Circuit, by which the prisoner was acquitted and released. They judged it necessary, however, to record their opinion, that the evidence of the prosecutrix's daughter, and of Luchmunia, the girl who accompanied her, corroborated by that of the prosecutrix and others as to the state of the clothes and body of the ravished girl, and the other circumstances of the case, most fully and satisfactorily brought home the charge to the prisoner; and that the second Judge of Circuit would have exercised a much more sound discretion and judgment, if, instead of directing the prisoner's release, he had referred the trial to the Court of Nizamut Adawlut, on the ground of the unsatisfactoriness of the *futwa* of his law officer.

SYUD KULLEEM,
against
SHEIKH MOGUL and five others.

1823. Nov. 29th. Case of SHEIKH MOGUL and others.

Charge—MURDER.

THE prisoners Sheikh Mogul, Ruzeeah *alias* Ruzeeoollah, Musst. Cadun, Sabid, Soudagur, and Nadoo, were tried at the second sessions of 1823, for zillah Sylhet, being charged with the murder of one Syud Sulleem. The circumstances of this case were as follow.

Three prisoners, convicted of concerting and perpetrating a murder from motives of enmity, sentenced to be hanged; a fourth, for the same offence, to imprisonment with

On the afternoon of the 4th of Assar, corresponding with the 17th of June 1823, the prosecutor sent his brother Suleem for a piece of cloth to Anunderam Tanty's, at the neighbouring village of Neagaow; and Suleem not returning that night, the prosecutor went to enquire about him at the houses of their relations and connections, without success, and afterwards was proceeding towards the village to which he had sent him, when seeing the two witnesses Bildary and Doomai sitting on the opposite bank of the Khoomai river watching cattle, he learned from them that they had seen his brother the evening before going towards the village Aseepore. The prosecutor accord-

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Case of SHEIKH MOGUL and others.

hard labour for life; a fifth, for being privy to the same, to imprisonment for seven years; and a sixth, for being privy after the fact, to three years imprisonment.

ingly went to Aseepore to the house of the prisoner Mogul, with whom he was previously acquainted, and was told by Mogul and his wife, the prisoner Musst. Cadun, that they had not seen his brother Suleem at that village for the last month and a half. He then went to Anunderam's, and finding his brother had not been there, he returned home, and the following day renewed the search, in company with the witness Aleem, son of Dost Mahomed, when passing along the bank of the river Khoomai, below the village of Aseepore, they discovered his corpse lying on the edge of a *chur* on the other (the western) side of that river. The prosecutor left his companion Aleem, and went to call people from the neighbouring village of Aseepore; but as none of the inhabitants came forward, he went back to his own village to bring some of his acquaintances, leaving Aleem to watch the body. He returned with the witness Khedoo Fukeer, Aleem son of Jumauloodeen, Jharoo Sheikdar, and Dhun Singh, amongst whom Khedoo Fakeer and the prosecutor crossed the river; and they deposed to observing marks on the mouth and chin, by which three of the teeth were broken, and the chin bone broken, with a mark round the neck, as if of strangulation, and a black mark on the loins. The witness Aleem, son of Dost Mahomed, who first accompanied the prosecutor to search for Suleem, and had crossed over alone when they discovered the body, described the mark on the mouth and chin, and that three teeth were broken, but stated he did not examine whether there were any other marks on the body. The other witness saw the body from the eastern side of the river, about 40 cubits off, and gave statements of rather a contradictory character. There was no doubt, however, of this dead body being that of Suleem, and that there were marks of violence; although the prosecutor, possibly from the state of his feelings at the moment, did not take such precautions as he ought to have done to secure the body till the arrival of the police officers. It appeared that he and his companions engaged a stranger named Aleem, son of Heerun, who was passing, to watch the body until their return from the Thana, distant only about eight miles; and that on the return of the prosecutor with a Burkundaz in the afternoon, neither the body of Suleem, nor Aleem who had been stationed to watch it, were to be seen, and the body was never afterwards found. The Darogha arrived in the night, and on the following morning obtained intelligence which induced him to apprehend some of the inhabitants of Aseepore, and he succeeded in discovering the circumstances of the murder, and in securing the perpetrators. An intrigue had existed for some time between the deceased Suleem and the prisoner Cadun, wife of the prisoner Mogul; but there had lately arisen some disagreement between them on account of Suleem's not having brought her a piece of cloth which he had undertaken to get made for her, and also probably from an intimacy which had lately commenced between Musst. Cadun and her near neighbours, the prisoners Soudagur and Nadoo. Suleem was represented to have been addicted to women; and Musst. Cadun, having formed this new connection, might be supposed well inclined to favour the gratification

of her husband's resentment against Suleem for the dishonour he had brought upon him, whilst Soudagur and Nadoo were influenced by the desire of getting rid of a rival in the affections of Cadun. Musst. Cadun, in her answer before the Magistrate, ascribed the murder of Suleem to his having an intrigue with Musst. Abluk, wife of Soudagur, and sister of Nadoo. This was not otherwise supported, but it might be true, and might have furnished an additional motive to those two prisoners to destroy Suleem. Musst. Abluk denied the existence of such an intimacy between her and Suleem, maintaining that the latter had an intrigue with Cadun for two years. The prisoners Ruzeeoollah and Sabid, as being near neighbours and connections of Mogul's, and perhaps themselves annoyed by the propensities of Suleem, were induced to join in the conspiracy. It appeared, that on the evening of the 4th Assar, corresponding with the 17th of June, the deceased, on being sent by his brother, as above related, to Anunderam weaver's, went to the house of Mogul to visit Musst. Cadun, where, in pursuance of a preconcerted determination made by the prisoners to take his life, they gave him food, and entertained him till midnight, when they killed him, and afterwards threw his body into the river Khoomai, which runs by the village; and the body was found a short distance below that village, having been stopped by a *chur* at the corner of a reach, when floating down the stream.

There were no eye-witnesses to the murder of the deceased: but the witness Durbarry, father of the prisoner Soudagur, together with the females of his family; Abluk the wife of Nadoo, and father-in-law of the prisoner Soudagur; Butchun, the mother, and Boodun, the sister of the prisoner Nadoo, deposed to having gone out on the night of the murder, in consequence of hearing a disturbance near the prisoner Mogul's house, when they saw the five male prisoners dragging the body of Suleem to the river side, accompanied by the female prisoner Cadun. The witness Durbarry further stated, that he heard them say to each other, "Now that we have killed him, what shall be done with him?" and they agreed to throw the body into the river; and this witness and Butchun stated, that they saw the prisoners accordingly throw it into the river.

Budun, an intelligent girl 10 or 11 years of age, corroborated generally the evidence of the other members of her family, and said she heard Nadoo, on his return from the river, say that Ruzeea and Mogul had killed the deceased. Musummaut Abluk, wife of the prisoner Soudagur, saw the six prisoners dragging the body towards the river, and stated she heard Ruzeeoollah say, that, the others being unable, he had killed Suleem with a blow of his stick; and that it was Ruzeeoollah who proposed throwing him into the river. This witness spoke also of having overheard a consultation amongst the six prisoners that afternoon at Mogul's house respecting the murder, in which the men made objections, but the woman Cadun insisted upon its perpetration. It was to be observed, that the witness told the Magistrate that this meeting occurred four or five days previous to the murder: and on being questioned as to the difference in these

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statements, she alleged in explanation, that she heard them consulting about it on both occasions. There was also a witness named Mussummaut Myna, the mother of the prisoner Ruzeeoollah, who deposed to going to Durbarry's house, in consequence of hearing the barking of dogs, when she saw Soudagur and Nadoo washing their feet; and Soudagur said he had killed the *haramzada* Suleem. She admitted, that her son Ruzeeoollah went that evening to an entertainment at the prisoner Mogul's. The witness Aleem, son of Heerun, denied that he agreed to watch the corpse; but the Magistrate, considering him deserving of punishment for having left it to be carried away by the stream, punished him by a fine. There were two witnesses (Bildar and Doomai) who saw the deceased Suleem passing towards the village of Aseepore on the afternoon of the murder, and gave that information to the prosecutor, as he was proceeding in quest of his brother. The first prisoner Mogul, in his answer before the Darogha, charged the other male prisoners with killing Suleem with sticks, on the bank of the river, and throwing the body into the river. Before the Magistrate he stated, that a previous consultation had taken place, in which he was present, and it was agreed to kill Suleem. That he came to the prisoner's house, and was entertained with a fowl by his wife Cadun and the prisoner Soudagur, after which the four male prisoners killed him on the bank of the river, and he (the prisoner Mogul) went to the river side, and saw that they had killed him. Before the Court of Circuit, this prisoner denied the charge; but when called upon for his defence, he stated, that Suleem came in the afternoon, in the month of Assar, to his house; and that as he had previously repeatedly dishonored him by entering his house, he had mentioned it to his neighbours, on which Ruzeeoollah proposed killing him, and the prisoner consented, and agreed to be a party to the act. The prisoner also admitted his confession before the Magistrate, excepting the part respecting the killing a fowl, and entertainment of Suleem. The second prisoner Ruzeea *alias* Ruzeeoollah, in his answer before the Darogha, said, that the other prisoners killed the deceased, and that he gave him a blow *after he was dead;* and, both before the Darogha and the Magistrate, he admitted being present, and assisting in dragging the body, and throwing it into the river; adding before the Magistrate, that Suleem was the thief, and also had intrigues with the wives of the prisoner Mogul and Soudagur. Before the Court of Circuit he denied the charge, admitting that the stick produced was his. This was the stick which he admitted before the Magistrate to have had in his hand; and that in aiming a blow at Soudagur, he struck the foot of the dead body of Suleem. The stick was about three cubits long, from one to two fingers thick, and a light bamboo weighing only a quarter of a *seer*. He made no defence beyond the denial of the charge. The third prisoner, Mussummaut Cadun, stated before the Darogha and the Magistrate, that Suleem, after having eaten at her house, went out, and was killed by the prisoners Soudagur, Nadoo, Sabid, and Ruzeeoollah; adding before the Darogha, that they afterwards threw him into the river. She stated, that the prisoner Soudagur brought the deceased Suleem to her house that

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evening, and also brought the fowl with which they entertained him; and that it was with Musst. Abluk, the wife of Soudagur, that Suleem had an intrigue, and not with herself. Before the Court of Circuit she denied the charge, and her answer before the Darogha, but admitted the answer before the Magistrate. The 4th prisoner, Sabid, denied before the Darogha. Before the Magistrate he stated, in answer, that he went that evening to the house of his neighbour Ataoollah, and returning home from thence, he saw the prisoners Soudagur, Nadoo, and Ruzeeoollah drag the dead body of Suleem to the river, and throw it in, and that Soudagur and Nadoo said they had killed him. Before the Court of Circuit he pleaded not guilty, stating that he saw Suleem lying dead at the Ghaut of Mogul's house, and that the other four male prisoners were there. He admitted his answer before the Magistrate. The 5th prisoner Soudagur denied both before the Darogha and the Magistrate, stating before the latter, that he went to the hills, when eight days remained of the month of Jeyt, and was returning, after an absence of fourteen days, when he was apprehended on the charge. He attempted before the Court of Circuit to establish this *alibi*, by calling the persons whom he accompanied to the hills, by whose evidence it appeared that they fell in with him on his way to the hills, at a place about sixteen miles distant from his house, late in the afternoon of the 6th of Assar, which was the third day after the murder of Suleem; and it appeared on the trial, that he did in fact quit his village for the hills, after the occurrence of the crime. The 6th prisoner Nadoo denied throughout, and pleaded not guilty before the Court of Circuit. In his answer before the Magistrate, he admitted being at the house of Mogul on the evening of the murder, and saw Mogul give Suleem fowl to eat; and that after remaining there about a quarter of an hour, he returned home.

The *futwa* of the law officer of the Court of Circuit convicted the whole of the prisoners of having, in concert, killed Suleem, in pursuance of a preconcerted design, and declared that they were accordingly liable to discretionary punishment. The law officer did not declare them guilty of wilful murder, nor did he specify the denomination of their crime in Moohummudan law. With reference, therefore, to the circular order of the 5th of September 1811, the Judge observed, that he had thought of calling upon him for a further *futwa* to supply this omission; but that he had refrained from doing so, upon his representing that the crime, in consequence of the instrument or mode of perpetration not being ascertained, could not be legally denominated wilful murder; but that the premeditated intent to kill being manifest, it exceeded any description of culpable homicide; and that, if a further exposition were required, he could only repeat what the first *futwa* contained. He (the Judge) was of opinion that the six prisoners were guilty of the wilful murder of Suleem, and that the murder was preconcerted and deliberately executed. He added: "The deceased was not sacrificed to a sudden act of resentment. The prisoner Mogul stated on trial, that Suleem having repeatedly dishonored him, his death had

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been agreed upon; so that whatever extenuation may be found in a sensibility to family disgrace, when leading to sudden acts of revenge, it cannot unhappily be urged in mitigation in the present case. It appears to me, moreover, to be a case of peculiar atrocity, and calling for marked severity of punishment, from the extraordinary disappearance of the dead body of the deceased, which must have been the result of the combined determination of the inhabitants of the village in which the prisoners resided, to obstruct the course of justice, who accordingly, when the prosecutor found the body of his brother bearing marks of violence, not only withheld their own assistance, but unquestionably, in my opinion, although it has not been proved, must have induced the witness Aleem to quit his post, and thus occasioned the body to be carried down by the stream. There is nothing in evidence attaching different degrees of criminality to any of the prisoners, as the statements of the members of the family of Soudagur and Nadoo, as well as of Mussummaut Myna, the mother of Ruzeeoollah, may be supposed to be biassed by their connection with the prisoners respectively; but, considering that Suleem was the victim more especially of the revengeful or malignant passions of the prisoners Mogul, Soudagur, and Nadoo, I am induced to point out those three prisoners as proper objects of capital punishment, and to propose some mitigation in favour of the prisoners Mussummaut Cadun, Ruzeeoollah, and Sabid. The Court will observe, that no attention is paid in the *futwa* to the motive suggested by the prosecutor as having led to the murder of his brother, viz. that of robbing him. In this I entirely agree with the law officer, and think that, as usual on such occasions, the prosecutor was urged to introduce the story by the double motive of screening the memory of his brother from the imputation of the intrigue, and also to aggravate the criminality of the prisoners, not only by depriving them of every appearance of justification, but by assigning a motive which at once accounted for the murder, and magnified the nature of the crime."

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoners Mogul, Ruzeea or Ruzeeoollah, Sabid, Soudagur, and Nadoo, of having, from enmity, concerted and perpetrated the murder of Suleem, the prosecutor's brother, and Mussummaut Cadun, wife of the prisoner Mogul, of having been privy to the concerting of the murder, and aided in dragging the corpse, and throwing it into the river; declared all the six prisoners to be liable to *Acoobut*, according to their respective degrees of guilt; and, with respect to Mogul, Ruzeea, Nadoo, and Soudagur, pronounced them liable to suffer death by *Seasut* for the crime.

By the Court. C. Smith, (second Judge.) "The murder clearly, I think, appears to have been committed in Mogul's house, where the deceased Suleem, on his way to Anunderam Paul's, had been induced to stay, by the *ziäfut* or treat given him for the express purpose of detaining and murdering him. The same party who perpetrated the murder seem to have dragged the corpse to the river, with the exception perhaps of the prisoner Sabid, who (his house being at some distance from Mogul's) may have joined after the deed was done.

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The provocation is to be found in the libidinous propensities and pursuits of the deceased, who is supposed to have had an intrigue with the female prisoner Cadun, the wife of Mogul, and perhaps, with the witness Abluk, the wife of the prisoner Soudagur. Mogul, to the Thanadar of Lushcurpoor, charges the four male prisoners with the murder, denies that he himself was one of the perpetrators, and says nothing of his wife Cadun. But he acknowledges the *ziäfut*, the provocation, (which he says was an intrigue with Soudagur's wife,) and his having, on account of the share he had in the disgrace brought upon the family, refrained from informing the police of the murder. Before the Magistrate he more distinctly acknowledges, that all the five male prisoners, himself inclusive, concerted the murder of Suleem; and to the provocation of the intrigue with Soudagur's wife adds another, viz. that Suleem was a thief, and used to extort money from the villagers by menace. His answer to the police he acknowledges before the Magistrate and on his trial. His answer before the Magistrate he acknowledges also, with the exception of what relates to the *ziäfut:* but his Foujdarry examination is proved by Madhoram and Jewunram. Ruzeea's confession before the police amounts to his having killed the deceased, in conjunction with the four other male prisoners. Before the Magistrate, he says no more, than that he arrived at Mogul's after Suleem was dead, and joined the four other male prisoners in dragging the corpse to the river. On the trial he denies both these answers, but they are proved by Ramsurrun Dut and Hureeram Doss. Soudagur pleads an *alibi*, in the proof of which he fails. Nadoo's answers, which I do not find in the trial, are in the Foujdarry papers, and correspond with the Judge of Circuit's statement. That before the Magistrate is prevaricating. Sabid's answer is as stated by the Judge of Circuit, and he does not gainsay it on the trial. Cadun, the *teterrima causa* of all the mischief, before the police accuses all the male prisoners but her husband Mogul, as Mogul had accused all his fellow prisoners but Cadun. In the Foujdarry she says, that Soudagur struck the fatal blow while the other three were with him; and this, she says, she heard from Nadoo. She acknowledges the treat of the fowl; but asserts it was brought by Soudagur from his own house, and by him cooked, she declining that office on account of the ill-health of her husband. The prisoners all live in the same village, Aseepoor, Pergunna Turruf. Mogul and Cadun are man and wife. Ruzeea is married to a sister of Cadun; Soudagur to his cousin. Nadoo is Mogul's nephew, and lives in the same house with Soudagur, who is married to his sister, so that all these five have a family connection. A connection of Sabid too with the other five, is mentioned in the evidence of Durbarry; but though he lives in the same village, his house is said to be distant. The witness Myna swears that Soudagur said, "I have killed the bastard," meaning Suleem, while Nadoo was standing by. The witness Abluk swears, that she saw all the six prisoners dragging the corpse to the river, and that she heard Ruzeea say, "I killed him with one blow of my *shullauck*;" and that she heard Cadun say,

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'I have killed the slave girl's son, and thrown him out; now my calamity is gone from me.' That Soudagur and Nadoo, on returning home, said, 'We have thrown the corpse into the river.' That Soudagur said to Myna, 'Thy son Ruzeea has killed Suleem.' That Nadoo said to the witness's mother, when Ruzeea struck Suleem with the *shullauck*, 'I was frightened, and ran away among the bamboos.' The witness Durbarry, father of Nadoo, swears that he saw all the six prisoners dragging the body, and throwing it into the river; and that Nadoo on his return told him it was Suleem's body, whom they had killed. He says too, that he had seen Suleem at Mogul's house in the evening. He states, moreover, that Nadoo and Soudagur set out *after* the murder, the former to bring rice, the latter towards the hills for bamboos. Durbarry's wife and his daughter give an evidence highly unfavourable to the prisoners. Upon the whole, I consider it to be impossible not to conclude that Mogul, Ruzeeoollah, Nadoo, and Soudagur planned and perpetrated the murder; and as I would not sentence capitally more than suggested by the Judge of Circuit, I substitute Ruzeeoollah, whose *shullauck* would appear to have inflicted the finishing blow, for Nadoo or Soudagur: it is nearly indifferent which. The fourth I would sentence to perpetual imprisonment with hard labour at Allipore; and Cadun to imprisonment for seven years, and Sabid to three, with hard labour, in the jail of zillah Sylhet."

The third Judge (J. Shakespear) concurred in this view of the case, and the following sentence was issued accordingly.

"The Court, concurring in the *futwa*, as far as regards the prisoners Mogul, Ruzeea, Soudagur, and Nadoo, and Musst. Cadun, and deeming the prisoner Sabid guilty of being privy to the murder after its perpetration, and seeing no circumstance to render the prisoners Mogul, Nadoo, and Ruzeea objects of mercy, sentence the prisoners Mogul, Nadoo, and Ruzeea to suffer death. The prisoner Soudagur the Court sentence to perpetual imprisonment with hard labour for life in the jail at Allipore; the prisoner Mussummaut Cadun to imprisonment for the term of seven years from the present date, with labour suited to her sex; and the prisoner Sabid to imprisonment with labour for three years from the present date, in the jail of the district of Sylhet."

KUTRA,
against
BOCHA.

1823.
Dec. 5th.
BOCHA'S case.

Charge—MURDER.

AT the second sessions of 1823, for zillah Mymensing, the prisoner Bocha was brought to trial, being charged with the murder of one Needha. The facts of the case, as they appeared in evidence, were these. The deceased Needha and his brother Tajooa were at work in a sugarcane field, at about noon, on the 8th Jeyt 1230, corresponding with 20th May 1823, when the prisoner having climbed a mangoe tree near the spot, belonging to the deceased, for the purpose of eating the fruit, the deceased abused the prisoner on account of the latter eating his fruit; upon which the prisoner descended from the tree, and gave the deceased a severe wound on the back of the neck, and two on the left shoulder, with his *kodalee* (hoe), of which wounds he immediately died. Tajooa called to the witnesses Khosaul, Fukeer, and Ameer, who were at work in a neighbouring field, that his brother was killed; and, on their immediately coming to the spot, they saw the prisoner running off with a bloody *kodalee* on his shoulder, and found the deceased Needha lying with his face to the ground, with a severe wound on the back of the neck, and two on the left shoulder, the wounds bleeding, and the deceased quite dead. Shekoo, Choollooa, and Neamut also came to the spot, and saw the body in the state described. They then proceeded to the house of the prisoner, where the latter acknowledged, in the presence of the assembled villagers, that he had killed the deceased with his *kodalee*. He was lying on the ground agitated and distressed in mind, and calling on the villagers to kill him, as he had killed Needha. The bloody *kodalee* was found at his house. It appeared that Tajooa alone was present when the prisoner attacked the deceased; and he was so extremely deficient in understanding, as to be almost an idiot, (and was so described by the prosecutor and some of the witnesses;) so that the Judge of Circuit considered it useless to examine him at any length. He at first deposed, that he had not seen the prisoner inflict the wounds: afterwards he declared he had seen the attack, and that the prisoner gave the deceased a wound on the back of the neck with a *kodalee*, and two wounds on the shoulder; and that he (the witness) was at a distance, and on going near, he found his brother Needha yet alive, but that he died immediately after, and that he heard no previous quarrel or abuse between them. The prisoner was secured at his own house immediately after the murder by the villagers; and a Chowkeedar was sent for, in whose charge he was taken, with the corpse of Needha, to the Thana. By the evidence and the inquest it appeared, that there was an extensive and severe wound on the back of the neck, dividing the bone and one of the arteries, and also two wounds on the left shoulder; but the neck wound had doubtless been the occasion of the immediate death of the deceased. The

The prisoner ascended his neighbour's mangoe tree, and began to eat his fruit; and on being abused by the owner, immediately came down, and with three blows of his *konalee*, or hoe, killed that person. At the recommendation of the Judge of Circuit, and under all the circumstances, capital punishment remitted, and sentence imprisonment for life.

1823.
BOCHA'S case.

kodalee produced, and which was found in a bloody state at the prisoner's house immediately after, was a formidable sharp weapon, the blade measuring seven and an half inches square, and the handle two cubits long, and the instrument weighing two seers. In the hand of the prisoner, who was a stout young man, accustomed to its use, it might at one blow have inflicted the wound on the neck, or even have severed the head altogether from the body. The prisoner, before the Darogha, at the Thana stated, that he had climbed a mangoe tree belonging to the deceased to eat the fruit, when Needha threw mangoes at him, and gave him abuse, on which he descended from the tree, and killed him with the *kodalee* which he had taken with him to work with in the sugarcane field, and that there was no other cause of enmity between them. Before the Magistrate, he denied having killed the deceased, saying that he and Needha had mounted the mangoe tree together to eat fruit, leaving their *kodalees* under the tree, and that, on his shaking the branches, Needha fell from the tree upon one of the *kodalees*, by which the wounds were occasioned, and he died; and, on seeing the blood, he ran away out of fear. He denied his Thana confession, alleging that he was beaten to compel him to confess in the presence of the witnesses Kalla and Meena, (the latter his own brother,) who deposed, however, on the trial, that they did not see him beaten or ill-treated at the Thana. Before the Court of Circuit the prisoner pleaded not guilty, stating, that he heard that Needha mounted a mangoe tree, and fell from it upon the *kodalee*; and he denied having made the Thana confession.

His confession in the first instance, immediately after the commission of the crime, and dictated by the state of his feelings, whilst yet in his own house, was satisfactorily established by the evidence of the villagers, who came immediately to secure him; and equal dependance was to be placed upon the Thana confession, as there appeared no ground for the supposition of any improper means having been used to procure the same. The prisoner's answer before the Magistrate refuted itself, it being impossible that such wounds could have ensued from simply falling on the *kodalee*; and had such been the case, it was not likely he would have taken up the bloody instrument, and in the face of the villagers, at work near the spot, have made his escape. The tree also was twenty or thirty cubits from the spot where the deceased was found. That his intention in attacking the deceased with such an instrument, and inflicting so dreadful a wound on his neck, as well as two other wounds, must at the moment have been to take his life, appeared hardly to admit of a doubt. The only circumstance in the trial of any difficulty was to ascertain a sufficient motive for the act. A quarrel was mentioned by the prosecutor as having occurred between Needha and the prisoner's younger brother Bunooa a short time previous, on account of the prisoner's cattle having eaten some sugarcane belonging to the prosecutor. But this was probably slight and temporary, as none of the witnesses, who were neighbours of the parties, had heard of it, nor had the Darogha been able to discover upon the spot (although Bunooa himself was examined) the existence of such a quarrel. The

abuse for eating his mangoes must therefore be presumed to have led to the fatal attack.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner upon strong presumption of the wilful murder of Needha, and liable to a sentence of *Seasut* extending to death. The intention to kill, the Judge observed, being manifest from the nature of the instrument used; and the provocation, though sudden, arising from so trifling a cause, he felt much hesitation in urging even the absence of previous malice as any extenuation of the prisoner's crime; but taking that circumstance into consideration, and adverting to the possibility of the prisoner being more easily inflamed into a violent heat of passion after working in the sun for some hours during the hottest season of the year, together with the apparent horror with which he was seized after the act, when he lay on the ground in the presence of the villagers, and called upon them to put an end to him, as he had killed Needha, the Judge suggested in his favour a mitigation of the penalty of capital punishment.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of Needha, declared him liable to suffer death by *Kissas* for the crime.

By the Court. C. Smith, (second Judge.) "The fact seems sufficiently established. The cause was either lurking enmity, in consequence of some former quarrel, or the rage of the moment, excited by the language used by the deceased, on seeing that the prisoner had climbed up his mangoe tree to eat the fruit, or the two combined. In either case, I see no justification, nor even any thing that can be considered as alleviating the prisoner's act; for in the quarrel immediately preceding the homicide, the prisoner was the aggressor, it being the deceased Needha's tree which he climbed, and his fruit which he intended to eat. It would seem too that he did not take the instrument up the tree with him, but left it below; and on the verbal quarrel, descended the tree, took up the instrument, and, running furiously upon Needha, inflicted those wounds which occasioned instant death. Death inflicted by such a weapon, upon such provocation, is clearly wilful murder. I am of opinion, therefore, that the prisoner should be adjudged to suffer death."

J. Shakespear, (third Judge.) "I think we should always pay attention to a Judge of Circuit's recommendation to mercy, when the grounds for making it appear reasonable. For the consideration stated by Mr. Lawrence, I conceive that a sentence of perpetual imprisonment will be more fitting than a sentence of death."

W. B. Martin, (fifth Judge.) "I concur with the third Judge in sentencing the prisoner to perpetual imprisonment. The Judge of Circuit's recommendation of the prisoner to mercy seems to be founded on the consideration of the probability, arising from the circumstances of the case, that the assault on the deceased was the result of sudden passion, and not of deliberate malice. This conclusion is, I think, warranted by the evidence; and should, I conceive, operate to exempt the prisoner from capital punishment." The prisoner was accordingly sentenced to imprisonment for life.

1823.
Dec. 15th.
Case of GUNGAGOBIND BUNHOOJEA and others.

GOVERNMENT,
against
GUNGAGOBIND BUNHOOJEA, and three others.

Charge—ASSAULT, and RESISTANCE of PROCESS.

Held that the Court of Nizamut Adawlut are competent to impose fines to an indefinite amount, commutable to a limited period of imprisonment.

THE prisoners Gungagobind Bunhoojea, Kunhai Mookhurjea, Jye Sirkar, and Mooktaram Chuprassee, were charged with having violently assaulted the Moonsiff of Santipore, whilst employed in the execution of his duty; also for resisting the process of the Court, and destroying the same. Their trial came on at the first sessions of 1823, for zillah Nuddea.'''

The Moonsiff stationed at Santipore, agreeably to the orders of the Judge, went on the 17th of February 1823, to attach a house and other property belonging to one Lukhun Puramanik, against whom a decree had been ordered to be enforced by the Court of Appeal. Having arrived at the habitation, he was about to execute his orders, when he was opposed by Obeychurn Bunhoojea, the *Gomashta* of the Santipore Factory, who asserted that the house had been purchased by his father, and had been in his possession ever since. This resistance of the process of the Court was duly reported by the Moonsiff to the Judge, when the necessary orders were passed, and the Moonsiff was directed, on the 17th of May, to affix an advertisement on the outer door of the house. This order he was about to carry into execution, when he was severely beaten by the prisoners, and the written process of the Court torn to pieces. These facts were satisfactorily established by the evidence for the prosecution.

The three first named prisoners resided in Lukhun Puramanik's house, and Gungagobind was Obeychurn's cousin.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner Gungagobind of the assault, and likewise of destroying the process of the Court, and the other three of the assault only. In this finding the Judge perfectly concurred; but as he considered this a violent resistance of the process of the Court, he referred the case, deeming the prisoner Gungagobind deserving of a severer punishment than he was authorized to inflict.

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoners Gungagobind Bunhoojea, Kunhai Mookhurjea, and Jye Sirkar on presumption of having backed their servants in an assault, and the prisoner Mooktaram of having actually been engaged in the assault and quarrel, declared the three first liable to reprimand and reprehension, and then to be entitled to their release, and the prisoner Mooktaram to be liable to *Tazeer*.

By the Court. C. Smith, (second Judge.) "I do not approve of our *futwa*, as far as regards the three first prisoners, seeing no sufficient ground to discredit the depositions of Roopchand, the assaulted Moonsiff, and the other witnesses. I think, however, that the measure of punishment suggested by the Judge of Circuit is excessive. Gungagobind I would sentence to one year's imprisonment without labour

1823.
Case of GUNGAGOBIND BUNHOOJEA, and others.

and irons in the Dewanny jail, and to pay a fine of 1000 rupees, or be confined another year. The same imprisonment for Kunhai and Jye Sirkar, with a fine of 200 rupees; and Mooktaram to be imprisoned with hard labour for one year and six months."

J. Shakespear, (third Judge.) "I concur in the conviction of the prisoners, and consider the measure of punishment proposed by the second Judge to be awarded, to be suitable to the nature of the offences which have been proved against them. Previously, however, to joining in the proposed sentence, I wish to have the power of our Court discussed by the Judges at the English sitting, in regard to the imposition of fines in criminal cases to any indefinite amount exceeding 200 rupees."

A majority of the Court having subsequently determined that the Court of Nizamut Adawlut are competent to pass sentence by fine to an indefinite amount, commutable for a limited period of imprisonment, the third Judge finally concurred in the sentence proposed by the 2d Judge in this case; and sentence was awarded accordingly.

MUSST. KUBLEE, *against* MOHUN and LUCHMUN.

Charge—MURDER.

1823.
Dec. 15th.
Case of MOHUN and LUCHMUN.

Conviction of beating a missing person: but the Court not being satisfied that the injury received by the missing person was of such a nature as to occasion death, sentence, under the circumstances of the case, one year's imprisonment.

THE trial of these prisoners came on at the Benares monthly sessions for August 1823. The prisoners were first taken up in August, 1814, at the suit of the prosecutrix, on a charge of having made away with Ramanund her hushand. In the year 1820, the Magistrate of the city Court acquitted the prisoners, and they were ultimately committed by order of the Nizamut Adawlut. The circumstances of the case were briefly as follow. The prisoner Luchmun, with two other persons, seized the husband of the prosecutrix at his house, and conveyed him to their own in another village, with the view, it appeared, to recover from him a trifling sum he was indebted to them. Shortly after he had been taken to the house of the prisoners, as deposed to by four witnesses, the prisoner Mohun ill-treated and beat him, but not in such a way as to endanger life: beyond this, what befel him, or had become of him, did not appear; but from that day he had not been heard of. The prisoners admitted they had sent for him to their house, but alleged that he shortly after went away, leaving his turban and *dhotee* at their door, which they shewed to his relations who came to enquire about him soon after, and told them of his having left the house.

The law officer of the Court of Circuit pronounced in his *futwa*, that there was strong suspicion of the prisoners having murdered the husband of the prosecutrix, and declared them liable to confinement until the said Ramanund should be forthcoming, or information be obtained of his natural death. The Judge of Circuit did not question

1803. Case of MOHUN and LUCHMUN.

the evidence of the four witnesses for the prosecution in the smallest degree; still he did not think that the inference to be drawn from it, taking all other circumstances into consideration, was at all conclusive of the prisoners' guilt, or sufficient to warrant a sentence of unlimited imprisonment. It was clear, he observed, that no previous enmity or malice existed between the prisoners and the person missing; and the account given by the prisoners, supported as it was by the evidence of Hingoo and Sumshar Singh, he thought by no means improbable.

The *futwa* of two of the law officers of the Nizamut Adawlut convicting the prisoners Mohun and Luchmun, upon strong presumption, of having beaten the prosecutrix's husband, (who was missing), from which beating it was probable that his death ensued, declared them liable to *Acoobut* for the crime.

By the Court. C. Smith, (second Judge.) "Though Luchmun forced the deceased, or missing Ramanund, from his house to that of Mohun, yet in what occurred at Mohun's house, Mohun seems to be the principal, indeed Luchmun is not named as having done any thing there; and, as the younger brother of Mohun, he appears to have acted under his orders in seizing Ramanund. It is Mohun too who compromised with the prosecutrix, a circumstance which I think of no small weight against him, and proved beyond all doubt, both by the oath of the prosecutrix and by his own acknowledgment. Luchmun, I would imprison for one year, for his violence in carrying off Ramanund; and Mohun, I would imprison till Ramanund appears, or until some certain account is obtained of his having died a natural death, or under circumstances that in no way inculpate the prisoner Mohun."

J. H. Harington, (officiating Judge.) "On consideration of the proceedings held upon the trial of Mohun and Luchmun, charged with the murder of Ramanund, I concur in so much of the *futwa* of the law officers of the Nizamut Adawlut as convicts the prisoners of having assaulted and beaten Ramanund, and declares them liable to discretionary imprisonment by *Acoobut*. But it does not appear to me that there are sufficient grounds of presumption against either of the prisoners, so as to convict them of murder, or to warrant their detention in confinement for an indefinite period, which may have the effect of imprisonment for life. The non-appearance of Ramanund during so many years is certainly a ground of suspicion that the ill-treatment which he received may have occasioned his death. But, on the other hand, it might be presumed, that if he had been put to death, or had died soon after he was maltreated by the prisoners, his body would have been found. It is also possible that he may have absconded to avoid further molestation from his obdurate creditors; and from the local enquiry of the police officer, this seems to be the general opinion of the inhabitants of the village, not one of whom has expressed any belief of his being murdered. On the whole, I am of opinion, that the two prisoners should be sentenced to imprisonment for a year, and then discharged."

W. B. Martin, (fifth Judge.) "My opinion coincides with that recorded by the 2d Judge. The several facts which appear to me to have

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Case of MOHUN and LUCHMUN.

been satisfactorily established are, 1st. The blows which were inflicted on Ramanund by Mohun on the day on which the former disappeared. 2dly, Mohun having employed the agency of his brother Luchmun to drag Ramanund from his house, for the purpose of exacting payment of his debt; and 3dly, The compromise which he afterwards proposed to effect with the prosecutrix. These constitute, in my opinion, such reasonable grounds of suspicion against him, as to warrant the sentence which the second Judge has proposed to pass on Mohun. An equal share of suspicion does not seem to attach to the case of Luchmun, whom I would, therefore, sentence to no more than one year's imprisonment."

The chief Judge (W. Leycester) expressed his concurrence in the opinion recorded by the officiating Judge.

The third Judge (J. Shakespear) originally coincided in opinion with the second; but having subsequently withdrawn his name from the proposed sentence, there were two Judges, viz. the 2d and 5th, for sentencing Mohun to be imprisoned till the missing Ramanund should be found, or until certain intelligence should be obtained of his having died under circumstances not inculpating Mohun as the author of his death; and two, viz. the 1st and officiating Judge, for a sentence of one year's imprisonment against both the prisoners. The point was therefore decided by the voices of the 1st and officiating Judges, according to section 18, Regulation XXV. 1814, and the sentence of one year's imprisonment issued under their authority accordingly.

RADHAKISHEN, *against* PERSHAUD.

1823.

Dec. 31st. PERSHAUD's case.

Charge—MURDER.

Prisoner convicted of culpable homicide, by inflicting a blow with a club on the head of a person with whom his master was struggling: sentenced to five years imprisonment.

This trial came on at the second sessions of 1823, for the northern division of Bundlekhund. It appeared in evidence, that on the 30th of Bysakh 1230, Fussly, the prosecutor was thrashing his grain in his *kullean*, when Deby Singh, *Peada* of Lolljee Mahajun, came to him and forbade him. He replied, by requesting that accounts might be settled, and that he would pay whatever might be due; but on the *Peada* insisting, he left off his work. At this time his brother Hurkissen came up, and a little after Mukoond, brother of Lolljee; and these two began squabbling, and struggling with each other, when they both fell to the ground. The prisoner, a dependant of Mukoond, coming up, struck the deceased Hurkissen a blow with a club on the head, which knocked him down, and from the effects of which he died the same night. The prisoner, in his confessions at the Thana and before the Magistrate, alleged, that the deceased having struck Mukoond with a club, he then gave a blow; and before the Court of

1823. Circuit he stated, that the deceased struck him (the prisoner) a blow, when he returned it.

PERSHAUD'S case. The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted, on his own confessions, of the wilful murder of Hurkissen, and liable to *Kissas*. The club with which the blow was inflicted was 3¼ cubits long, and seven fingers in breadth, or six inches in circumference, at the thickest end. The Judge of Circuit did not concur in the finding of the law officer, convicting the prisoner of wilful murder, but admitted that the deceased died from a blow received from the prisoner. He therefore recommended, that the sentence of capital punishment should be commuted to imprisonment for life.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of the prosecutor's brother, declared him liable to suffer death by *Kissas* for the crime.

By the Court. C. Smith, (second Judge.) "Considering the situation in which his master or protector Mukoond was when the prisoner struck the deceased Hurkissen, I think ten years with labour will be enough. His motive, in part at least, must have been to defend and rescue his master."

J. Shakespear, (third Judge,) "I concur in the conviction of the prisoner, but am unwilling to sentence him to ten years imprisonment. In a common case of affray, attended with homicide, when nothing can be said in extenuation of the offence, we seldom give more than five years imprisonment. In this case, considerable allowance should be made. The man would hardly have done his duty, if he had looked on quietly, and allowed his master to be ill used; and the suddenness of the act, and the nature of the weapon, render it improbable that he contemplated the serious consequence resulting from the blow. I would not sentence the prisoner to a longer period of confinement than five, or at the furthest seven years."

J. H. Harington, (officiating Judge.) "The prisoner is convicted of unlawful homicide, and, under all the circumstances, I concur in opinion with the 3d Judge, that he should be sentenced to imprisonment, with labour, for five years." Sentence of imprisonment for that period was passed accordingly.

1824. Jan. 7th. MUSST. HICHNEE'S case.

MUSST. ANJOREA, *against* MUSST. HICHNEE.

Charge—KIDNAPPING.

On conviction of child stealing, the Court awarded

THE prisoner was tried at the second sessions of 1823, for zillah Mirzapore, being charged with the crime of stealing and selling the prosecutrix's daughter, a child of five years old. The facts of the case were briefly as follow. In Cheyt 1820, Fussly, after the Hoolee festival, the daughter of the prosecutrix, named Bughea, about five years old,

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MUSST. HICHNEE'S case.

was missing; and search was made for her during three days without effect. On the fourth day the prisoner informed Ramdeen (the father) that his daughter had been sold for 16 rupees to Mussumaut Chuhaittee, in Muhulla Shewalee; that she was sold by one Munnowur and his wife Juhree, whom she (the prisoner) had accompanied; and that if he would send any one with her, she would point out the place. Ramdeen being a prisoner in the criminal jail, the prosecutrix accompanied the prisoner to Benares; and on the child being demanded from Mussumaut Chuhaittee, she said she had not got her. The prosecutrix, on her return to Mirzapore, complained against the prisoner in Court, when she was apprehended; but Munnowur and his wife were not to be found. The prisoner confessed before the Magistrate, and her confession was proved by the evidence of the witnesses to it before the Court of Circuit.

7 years imprisonment; the last 3 years, however, to be remitted, in case the prisoner should make such a discovery as might lead to the restoration of the missing child.

The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of being concerned in stealing Mussumaut Bughea, daughter of the prosecutrix, and selling her, on her own confession before the Magistrate, proved in that Court by the evidence of the witnesses to it, and liable to imprisonment until the child should be produced. The Judge, in referring the case, strongly recommended that sentence should be passed in conformity with the *futwa*, as it might lead to the recovery of the child; and the penalty attached to a failure might prove a powerful check to child stealing: and he at the same time referred the Court to trial No. 2. of the reports of cases adjudged in 1815, observing, that although murder made no part of the charge in the present case, yet that the child must be considered as dead to its parents.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoner of being concerned with others in carrying away and selling the daughter of the prosecutrix, aged five years, declared her liable to be imprisoned till the missing girl should be found.

By the Court. C. Smith, (second Judge.) "I concur in the conviction, but would not make the imprisonment indefinite, not seeing sufficient ground to conclude that the girl has been killed. Seven years, with labour suited to her sex, appears to me a proper sentence."

J. Shakespear, (third Judge.) "I concur in the conviction, and in a sentence of seven years imprisonment; but with reference to the opinion expressed by the Judge of Circuit, and with the view of recovering the child for the parents, I think the ends of justice will be best promoted by the sentence being worded conditionally; that is to say, a fixed period of four years imprisonment, and three years in addition, unless the prisoner discloses such information as may lead to the recovery of the child, in which case she may be exempted from the enforcement of the latter part of the sentence."

W. B. Martin, (fifth Judge). "I think that a conditional sentence is more likely to lead to the recovery of the child, than the absolute imprisonment proposed by the 2d Judge; and with this view, I

1824. MUSST. HICHNEE'S case. concur in the modification suggested by the third Judge, viz. four years imprisonment, with labour suited to the prisoner's sex, and three years in addition, unless she furnish information which may lead to the recovery of the child.

1824. Jan. 8th. Case of CHEITRAM and others.

GOVERNMENT, *against* CHEITRAM and five others.

Charge—MURDER.

Six prisoners convicted of burning alive a woman from motives of revenge at being ousted by a decree of court. One (her husband) sentenced to imprisonment for life, and the rest to seven years imprisonment. The Judge of Circuit having declined to put the seventh prisoner on his defence on account of his youth, the Court ruled that this proceeding was irregular.

THE prisoners Cheitram, Ramroop, Churun, Gungabishen, Mun Opudiah, Khadoo Rai, and Sheodeen were charged, the first with burning alive his wife (Musst. Seoluggun), and the rest for aiding and abetting in the same. The prisoners were accused of having committed the above act, for the purpose of intimidating and preventing persons deputed to execute a decree of Court from performing that duty. The trial came on at the 1st sessions of 1823 for zillah Ghazeepore. The first witness (Namdar Khan) was a Burkundaz of Thana Bullia. He deposed, that he went to the place of the occurrence on the 12th of October, when his attention was called to the circumstance by two village watchmen. He saw the prisoner Cheitram, the husband of the deceased woman, and another person holding up, by means of a bamboo, the thatch of a hut; Gunga Bishen blowing the fire by waving a cloth, and the prisoners Churun, Khadoo, and Mun Opudiah bringing sugarcane leaves, and heaping them on the fire. On the witness's attempting to interfere, Gungabishen left blowing the fire, and with the prisoner Ramroop, and Hurree Choubee, (who was summoned as a witness on the part of the defence,) and two others, seized him, and prevented him. The witness then called to Goodra *Gorait* to pull away the thatch; but on going near, he was knocked down by one of the party, (not apprehended.) Birja *Gorait* also attempted to interfere, but was prevented. Hidayut Oolla, Chuprassee of the Court, was also held, and prevented from doing any thing to save the woman, who was consequently burned to death. The above-named Hidayut Oolla, a Chuprassee of the Court, confirmed every part of the last witness's evidence. He stated, that he went to give possession to Jootee Singh, the adversary of Cheitram, and on his cutting ten bamboos, Ramroop pushed him away, and said he would never allow possession to be given; and that Cheitram threatened to rip up his own belly, or jump down a well. The witness then went to a Thana, and brought the first named witness, Namdar, to help him, after which the woman was burned as above described, Jootee Singh having cut about 150 bamboos. Goodra *Gorait* deposed to the same facts; but added, that while the Burkundazes had gone to a

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Case of CHEITRAM and others.

well to drink, the woman came out of her house, attended by Cheitram, Ramroop, and Gungabishen, Munopudia, and other persons not apprehended. Gungabishen brought fire; witness called the Burkundazes, who came. The thatch had two sides, and was brought from Cheitram's compound, and put up with bamboos, and the woman went in, at which time the Chuprassies arrived, in consequence of the witness having called them. Gungabishen and another person put fire on the thatch. Gunesh knocked down the witness with a club when he attempted to interfere, (the mark still remained, and was shewn to the Court.) Then, by order of the Chuprassies, Birja interfered, but was prevented. In short, the woman was burned alive. When Jootee Singh and some others would have interfered, they were driven away with sticks. Witness went to the police, and informed, and returned with police officers. The woman was not completely burned; she was half burned, and could be recognized. Birja deposed, that he went with a Thana Burkundaz and a Chuprassee to cut bamboos. While they went away to drink, the wife of Cheitram came with Ramroop, Cheitram, Gungabishen, Khadoo Rai, and Churun, (the prisoners,) bringing wood and fire, (the latter in Gungabishen's hand,) and a thatch, which they supported on bamboos. The woman went in, and Gungabishen scattered fire on it, which he blew with a handkerchief. At this time the Chuprassee and Burkundaz came, and told Goodra to put out the fire; but Gunesh knocked him down with a club. The witness also attempted to put out the fire, but was prevented by the prisoner. The woman was then half roasted, and dead. Intelligence was subsequently taken to the Thana. The body was *waked* for two days, after which the witness came away, and did not know what became of it.

The defence of the prisoner was, that the woman burned herself, because the decree holders were knocking down her house, and exercising other oppression. They called evidence to prove this assertion, and that they were at a distance. Hurnarain, Kishenkaunt, Jobraj, Manik, and Deendial supported them in this story; but it appeared that their account was previously made up for the occasion, as none of them could account for the *Gorait* having been knocked down for attempting to save the woman, a fact which could not be doubted, and which was, in itself, a material fact in the case; and though all of them could see the thatch burning, no one could tell how the circumstance happened.

The *futwa* of the law officer of the Court of Circuit convicted Cheitram, Ramroop, Churun, Gungabishen, Mun Opudia, and Khadoo Rai of burning Seoluggun alive, and declared them liable to death. The Judge of Circuit, in referring the case, observed, that though these people were declared liable to death for the crime they had committed, he did not feel prepared to recommend the infliction of so severe a sentence on the whole of them. He added, that Gungabishen and Cheitram seemed to have been the principals in the crime, and Cheit Ram might certainly have prevented the immolation of this woman (his wife) by a single word; that he, however, did not, and seem-

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ed therefore to be the properest person to be selected, where all were deserving of death, to be made an example of; Regulation XXI. 1795, expressly declaring, that persons guilty of crimes of this nature are liable to the punishment due to murder. He therefore recommended, that Cheitram should be sentenced to death, and all the others to 14 years imprisonment. One person who was committed, a prisoner named Sheeodeen, being quite a child, (in his opinion, as well as that of the law officer, not above 12 years old,) was not put on his defence.

The *futwa* of two of the law officers of the Nizamut Adawlut, convicting the prisoners Cheitram, Ramroop, Churun, Gungabishen, Munopudia, and Khadoo Rai of assisting in burning Mussumaut Seoluggun, wife of the prisoner Cheitram, to death, declared them liable to suffer death by *Seasut* for the crime.

The Court, (present C. Smith and J. Shakespear,) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Cheitram to be imprisoned for life, and the prisoners Ramroop, Churun, Gungabishen, Munopudia, and Khadoo Rai to be imprisoned with labour for seven years. It appearing that a seventh prisoner, named Sheeodeen, was committed to take his trial in this case, and with regard to this prisoner the officiating Judge had stated, that "being quite a child, (in the officiating Judge's opinion, as well as that of the law officer, not above 12 years old,) he was not put on his defence;" the Court observed, for the officiating Judge's information and guidance, that the prisoner above-named having been committed by the Magistrate, it was not within the officiating Judge's competence to decline putting the prisoner on his defence, and taking a *futwa* from his law officer with regard to him; and that by Regulation VI. 1818, the power of annulling a commitment, to which the officiating Judge's proceeding amounted, was expressly taken from the Court of Circuit collectively, and that *a fortiori* such annulment could not be within the power of the single Judge of Circuit who may hold the session. Under all the circumstances of the case, however, the Court did not think fit to rescind the Judge's order in the present instance; but they desired that he would be careful to refrain from so irregular a practice in future.

1824.
Jan. 16th.
SOOMUT RAJPOOT'S case.

GOVERNMENT, *against* SOOMUT RAJPOOT.

Charge—PERJURY.

Case of a father (aged 70) swearing falsely to screen his son, who was charged with an offence: sentenced, under all the circumstances, to 3 months imprisonment without labour.

THIS trial came on at the second sessions of 1823, for zillah Juanpore. The case was simply as follows. In a trial at the first sessions of 1823, wherein Nurkoo was prosecutor, *versus* Pirthee Singh, the prisoner Soomut was a witness for the defence, and declared on oath, in answer to a question put to him, that the prisoner Pirthee Singh was not his son. It was, however, immediately established that he was; and Soomut then admitted, that Pirthee was his son, when the officiating Judge of Circuit directed the acting Magistrate to commit him to take his trial before the Court of Circuit for perjury. The prisoner acknowledged his deposition before the Magistrate, and also that before the Court of Circuit, and pleaded old age in extenuation of his offence.

The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted on his own confession, and liable to discretionary punishment. The Judge concurred in the *futwa*, but considered the prisoner a subject for mercy, from his age (which appeared to be upwards of 70) and weak frame, and accordingly submitted his case to the favourable consideration of the superior Court, suggesting that punishment be remitted, and the prisoner released.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Soomut Singh of perjury, declared him liable to *Acoobut* for the offence.

By the Court. C. Smith, (second Judge.) "It appears that the prisoner, in a case of murder or homicide, in which his son was the accused, and committed to the Court of Circuit, was called as a witness on the part of his son to prove an *alibi*; and, with a view probably to disguise a circumstance that would have weakened the force of his testimony, denied that Pirthee Singh was his son, affirming him to be the son of another, Soomut Singh. That he swore falsely has been sufficiently established; but as he did it from so natural a feeling as the desire of a father to save his son, I would reduce his sentence as low as it can be reduced with propriety. Three months imprisonment without labour and irons would, I think, suffice. To release him altogether, without punishment, would be a bad precedent. He is at present at large upon bail."

The third Judge (J. Shakespear) entirely coinciding in this opinion, the Court, adverting to all the circumstances of the case, and to the advanced age of the prisoner, sentenced him to be imprisoned without labour and irons for the term of three months.

1824.
Jan. 26th.
GHOLAM RAI'S case.

GOVERNMENT, *against* GHOLAM RAI.

Charge—PERJURY.

The prisoner being charged with perjury, in falsely swearing that he had no intercourse with a certain Darogha, (suspected of levying contributions), was released; the false swearing not amounting to perjury, as defined in clause 1, section 4, Regulation II. 1807.

THE prisoner Gholam Rai was charged with perjury, and tried for that offence at the 2d sessions of 1823, for zillah Jungle Mehals. The case was in substance as follows. The prisoner was supposed to have defrayed the expenses of the Police Darogha of Bancoora, when the Darogha visited the village to enquire into the circumstances of a case of burglary. The Magistrate got intimation of this circumstance, and was making enquiry into it, when he heard that the prisoner had been sent for by the Darogha, and had had some communication with him. The prisoner, in the first instance, was examined as a witness, and swore that he had had no personal communication with the Darogha at the station of Bancoora. He was not credited, but sent immediately to jail. After being there five days, he petitioned the Magistrate to be re-examined, as he had not told the truth at his first examination. He was then examined without being sworn, and admitted, that he had met and conversed with the Darogha at Bancoora; that what he had said to the contrary was false, and that in that he had perjured himself. On this he was committed to take his trial for perjury. Before the Court of Circuit he admitted, that he had sworn falsely with regard to that point; but stated, that he was alarmed at the time; that he was not accustomed to Courts, and that in fact he did not know at the time what he was saying.

He was convicted by the *futwa* of the law officer of the Court of Circuit, on his own admission of perjury, and declared liable to discretionary punishment by *Tazeer*. As he admitted his offence, the Judge could do no otherwise than concur in the *futwa*, and under clause 3, section 9, Regulation XVII, of 1817. he passed sentence upon him; notwithstanding which he did not consider the prisoner deserving of punishment, and submitted the case for the consideration of the superior Court, with a recommendation, that the punishment should be remitted, and the prisoner released. He added: "The prisoner has not altered one word of the evidence given by him on oath, with the exception of having had a meeting and conversation with the Darogha: and although, under the Regulations, an individual is liable to be committed for trial for false swearing, it must be material to the case at issue. His having met and communed with the Darogha, or not, appears to me to be perfectly immaterial, until it be proved that that meeting induced him to withhold information material to the conviction or innocence of the Darogha, and nothing of this kind is proved. The crime of the prisoner is confined to his having refused, in the first instance, to admit that he had a meeting with the Darogha. Whether the man be ignorant or not does not alter the case, it being necessary to look to the intent of the Regulation; but, to my mind, the Regulation never had it in

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contemplation to punish a man for refusing information of this nature: if it had, as far as my experience goes, I must say that the Magistrate's calendars might be filled with cases of perjury."

The *futwa* of the law officer of the Nizamut Adawlut, convicting the prisoner of perjury, declared him liable to *Acoobut* for the offence; but the Court, (present C. Smith and J. Shakespear,) not being satisfied that the prisoner had been guilty of perjury, according to the intent of clause 1, section 4, Regulation II. 1807, did not think proper to sentence him to any punishment, and directed that he should be forthwith released.

1824.
Feb. 4th.
Case of NUBBOO SINGH and others.

BULBHUDDER, *against* NUBBOO SINGH, and sixteen others.

Charge—PLUNDERING.

On conviction of plundering a stranded boat, the Court were of opinion, that the offence of the prisoners did not amount to robbery by open violence, and sentenced them to three years imprisonment.

THE prisoners Nubboo Singh Rajpoot, Hunooman Churn Rajpoot, Hunooman Singh Rajpoot, Rago Singh Rajpoot, Poorun Chumar, Neerao Gwala, Musst. Rumoonea Kaharin, Ramdeehul Kuhar, Jussoo Kandoo, Pultun Singh Rajpoot, Mahadeodut Rajpoot, Mahadeobuksh Rajpoot, Ungnoo Singh Rajpoot, Shuker Singh Rajpoot, Bhyrodutt Rajpoot, Chooneelal *alias* Ramsahoy Rajpoot, and Rambhurosa Rajpoot, were charged with having plundered a boat laden with grain, &c. and were tried for that offence at the second sessions of 1823, for zillah Tirhoot. From the prosecutor's deposition it appeared, that he was *churundar* of a boat coming from Purnea laden with grain and elephant's teeth, to the value of 5000 rupees; that he reached the village of Kateegong, near Jowanpoor, on the banks of the Ganges on the night of the 5th of September 1823, where he stopped for the night; and that on the morning of the 6th, the prisoner Nubboo Singh came on board, accompanied by several persons, and asked some questions; and soon after a gang of 2 or 300 people arrived, and by his (Nubboo's) order plundered the boat, and threatened the persons on board if they resisted. The prosecutor being obliged to leave the boat, went to the nearest police Chowkee, and on the arrival of a Burkundaz, some of the grain (about 220 maunds) was collected, and placed in the house of one of the witnesses; but the prosecutor declared that the greater part was plundered, and the boat destroyed by the people of the village, although the boat was in a safe situation, and when he left it, uninjured. The prisoners all denied the charge; but some of them said, that the prosecutor's boat was stranded near Kateegong, and that he at first promised to give one fourth of what was saved, but after that refused to give more than one sixth, in consequence of which there was a dispute, and the grain was deposited in the house

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of a person named Cheta. This however, did not appear to have occurred till after the boat had been plundered by the villagers, by order of the proprietors of Jownpoor, which fact the Judge of Circuit considered fully proved by the evidence of several of the inhabitants of the village, who, it might be supposed, gave their testimony with reluctance against the proprietors. Were it satisfactorily established, he observed, that the boat was lost, the guilt of the prisoners would be considerably lessened; but he saw no reason to believe that this was the case, although he thought it probable, the boat was driven on the sand by the strength of the wind, and could not at that time be got off, which the prisoners and others took advantage of, and plundered the property on pretence of saving it from being lost, a practice which, he added, was but too common all along the Ganges.

The zillah law officer, who presided at the trial in the absence of the circuit Mooftee, convicted the three first named prisoners of being leaders, and ordering the plunder of the boat, which amounted to Dacoity; the prisoners Pultun, Muhadeo, and Ungnoo of being concerned in the Dacoity, and declared them liable to punishment by *Acoobut*; and acquitted the rest of the prisoners. The Judge concurred in the conviction of the prisoners, as far as regarded the plunder of the boat; but he was doubtful whether the crime established, although a most serious one, and the perpetrators of it deserving of very severe punishment, amounted to that of robbery by open violence. He therefore passed no sentence, but referred the case for the final orders of the superior Court. Concurring in the acquittal of the remaining prisoners, who were not fully recognized by the witnesses to have been present aiding and abetting in the plunder of the boat, he issued a warrant for their release.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Nubboo Singh Rajpoot, Hunooman Churun Rajpoot, Hunooman Singh Rajpoot, Pultun Singh Rajpoot, Mahadeobuksh Rajpoot, and Ungnoo Singh Rajpoot, of plundering a stranded boat, declared them liable to *Acoobut* for the offence.

The Court, concurring in the *futwa*, and adverting to all the circumstances of the case, which did not appear to the Court to come under the class of offence defined by clause 3, section 3, Regulation LIII. 1803, sentenced the said prisoners to be imprisoned with hard labour for the term of three years. The Court observed, that the remaining eleven prisoners had been acquitted and released by the Court of Circuit.

MUSST. JOOEE,
against
BUNGSEE BAOOREE.

Charge—RAPE.

1824.
Feb. 10th.
BUNGSEE BAOOREE'S case.

On a charge of rape, the prisoner was acquitted; but found guilty of the minor offence of adultery, and sentenced for that offence to one year's imprisonment.

BUNGSEE Baooree was charged with committing a rape on the body of the prosecutrix, and tried for that offence at the 2d sessions of 1823, for zillah Midnapore. The prosecutrix stated, that she went into a jungle near to her own village, late one afternoon, to answer the calls of nature; that she there found the prisoner, who laid hold of her, and by force committed the crime of rape upon her. Of the two eye-witnesses, the first (Mohun) stated, that he and the other witness were passing at some distance from the jungle, when they heard voices; that he was sent to ascertain the cause of the noise; that when he approached the jungle, he saw the prisoner pulling the clothes of the prosecutrix; that she was refusing his request, and he urging it; but that, although she was a neighbour and of his own caste, he did not seize the prisoner, nor even call out to him, but returned immediately to his companion, to tell him what he had seen; that they both then ran to the spot, and found the prisoner in the very act of having carnal knowledge of the woman. The witness Bheem confirmed the story of his associate, but made it out that the woman was lying on her back, and the prisoner sitting, as he was at the time of his trial in the Court, on his hams. Both of the witnesses agreed in stating that the arms and feet of the female were at liberty; and that both parties were perfectly silent; that the prisoner, on observing them, quitted the woman, and went to them, begging them to keep the matter a secret; and that the woman walked away evidently abashed, and apparently crying, though they did not hear her voice. The prisoner at the Thana admitted that he had indulged for some time in a criminal intercourse with the prosecutrix, but denied having made use of any force. Before the Magistrate he varied his story, and wished to make it appear that the female solicited him to embrace her, but that he refused, in consequence of her being a married woman.

On the above evidence, the *futwa* of the law officer of the Court of Circuit convicted the prisoner of the crime with which he was charged, and declared him liable to discretionary punishment by *Tazeer*. The Judge of Circuit differed entirely from this finding, for the following reasons. 1st, The cry that is stated to have been heard, was that of the woman refusing the prisoner his request, but not that of a person on whom a rape was attempting to be perpetrated. 2dly, It was morally impossible to suppose Mohun should not have called out to the prisoner, when he saw a man of his caste abusing a female of his own; and, lastly, if the female were seriously objecting, she would not have been found lying down in the passive way described by the witnesses; and when the prisoner had quitted her, she would have gone to her neighbours and those of her own caste for protection, instead of returning with-

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BUNGSEE BADOREE'S case.

out uttering a syllable, and in a manner evincing shame at being caught committing a crime, rather than of being the injured party on whom a violent crime had been committed. The Judge's opinion as to the real facts of the case was in substance as follows. The witnesses, if they were to be believed at all, were going to cut wood, and they probably enough heard the offending parties conversing, and detected them; but it was necessary to save the caste of the female, and therefore the story of violence was trumped up. The woman evidently must have told her husband what had occurred; and in doing so, she must have mentioned the names of the persons whose arrival extricated her from her difficulties. One would suppose that the husband would have gone immediately to the witnesses to ascertain the circumstances of the transaction, but no such thing happened: they both deposed that they never had any communication with the husband on the subject; and the first time they were questioned upon it was by the police Darogha, and that not until five or six days after it had taken place. This story alone was, in the Judge's opinion, enough to prove that the real truth had not been told. He was inclined to give credit to the story told by the prisoner at the Thana. That the prisoner had committed adultery, there could be no doubt; but that he was guilty of the crime of rape, he did not believe; and he was therefore of opinion that the prisoner ought to be released.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of rape, committed on the prosecutrix, declared him liable to *Acoobut* for the crime.

By the Court. C. Smith, (second Judge.) "I agree with the Judge of Circuit in thinking it a case of adultery without rape. I would acquit, therefore, of the rape; but convicting of the minor crime, I would punish him by one year's imprisonment with labour. To release him would be *contra bonos mores*. The complaint to the police was made by the husband."

The third Judge (J. Shakespear) entirely concurring in this opinion, the prisoner was acquitted of the charge of rape, and sentenced, for the offence of adultery, to one year's imprisonment with labour.

1824.
Feb. 26th.
KISHEN DAS'S case.

MUSST. KESHOREE, *against* KISHEN DAS,

Charge—MURDER.

The prisoner being arraigned on a charge of murder was acquitted and releas-

THE prisoner was tried on the above charge at the second sessions of 1823, for zillah Midnapore.

Shortly after the death of the husband of the deceased Rajee (the prosecutrix's fellow wife), the prisoner and his family took up their abode with her, for the purpose apparently of assisting her to cultivate her land, and to manage her affairs. He soon became master of her person, and of her property also, as he pretended to have

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purchased the little she had for 80 rupees. Latterly he appeared to have become tired of her, and they began to have disputes. Ten days previous to her death, Rajee sent for the village officers, and complained to them, that on demanding from the prisoner 14 rupees, which she had entrusted to his care on his coming to her house, he refused to restore them. She mentioned also, that she had heard him consult with his wife about taking means to destroy her, and that it was her determination to go to the Zumeendar to appeal to him for protection. The village officers proposed that one of them should attend her; but that as they had not eaten that day, they should go home to take their meal, after which one of them would return and accompany her. The witness Jadoo Ghuraee returned to perform this promise; but the prisoner having in the mean time prevailed on her to be reconciled to him, she told Jadoo that she would not go on that day, but on some other. At the expiration of ten days, although she was, as admitted by the prisoner, in the enjoyment of health, had been employed in her usual occupations during the day, had returned in the evening, taken her meal, and gone to sleep, still, by sunrise, she was not only dead, but buried, and this without the knowledge of any one of the neighbours, except Musst. Lutha, a very old and decrepid woman. These facts came out in the course of the evidence. The prisoner, on trial, named many persons, to whom he stated that he had communicated the death of Rajee. They were all summoned, and all denied his assertion; even the decrepid old woman, Lutha, above named, who was stated to have assisted him to carry the corpse to the grave, which was dug close to his own house, denied this assertion.

ed; the circumstantial evidence against him amounting to suspicion, but not to presumption of his guilt.

The Judge of Circuit, in communicating his opinion of this case, observed, that knowing that Rajee had accused him to the village officers with meditating an attempt on her life, the prisoner would on her death, especially when it happened so suddenly, have been particularly anxious to communicate the occurrence to the village watchman; and if he buried her without the intervention of the police, he would have done so in the presence of witnesses; that his conduct, being directly the reverse of this, must give rise to the strongest suspicions that the woman did not meet with her death fairly; that taking all the circumstances of the case into consideration—the prisoner's coming almost a stranger to the house of the deceased—his first getting possession of her person, then of her property—the quarrels that immediately followed the last success—her having accused him of meditating her destruction but ten days previous to her death notwithstanding her being known to be in good health, her sudden death and burial, without the knowledge of a single person excepting an old woman, who from age was decrepid and more than half blind—these were all circumstances, owing to which he (the Judge) did not consider himself justified in releasing the prisoner, by concurring with the law officer, whose *futwa* acquitted him. He therefore submitted his case for the consideration of the Court of Nizamut Adawlut. Should the superior Court, he added, concur with him, that there was violent presumption of the prisoner's

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having destroyed the deceased, his crime would admit of but one punishment.

The *futwa* of the law officer of the Nizamut Adawlut, acquitting the prisoner of the charge of having murdered Musssummaut Rajee (fellow-wife of the prosecutrix) declared him entitled to his release.

By the Court. C. Smith, (second Judge). "There may be suspicion, but none such as amounts to strong presumption: further, the body does not appear to have been disinterred for the purpose of examining its condition. There is no sufficient ground, therefore, even for saying that the deceased was murdered. The prisoner must necessarily be acquitted." The third Judge (J. Shakespear) concurring in the above opinion, the prisoner was acquitted and released.

1824. Mar. 29th. Case of JUDDOONATH and others.

GOVERNMENT, *against* JUDDOONATH and two others.

Charge—ASSISTING AT AN ILLEGAL SUTTEE.

On conviction of assisting at an illegal *suttee*, unaccompanied by any aggravating circumstances, the prisoners were sentenced to six months imprisonment without labour and irons.

THE prisoners Juddoonath, Parusnath, and Pershaud Chowdhree, were charged with burning a woman by *Anoomurun**, in opposition to the known Hindoo law and the Regulations of Government, and were tried for that offence at the 1st sessions of 1814, for zillah Bhaugulpore. The circumstances of the case were as follow. One Toofa, the wife of Ramlal Shookul, who died at Moorshedabad in November 1823, on receiving intelligence of his death a few days after at Bhaugulpore, was burnt on a funeral pile. From the evidence adduced on trial, it appeared that the woman insisted on performing this act, and that the prisoners endeavoured to dissuade her from it. The *suttee*, notwithstanding, took place before the police arrived at the spot. The woman was the wife of a Bramin, who, according to the *Shaster*, ought not to have burnt herself any where but on her husband's funeral pile, and was only 14 years of age. Juddoonath, her uncle, it appeared, set fire to the pile, in the presence of Parusnath, her father, and Pershaud Chowdhree, the *Gomashta* on the part of the Zemindar of the village.

The law officer of the Court of Circuit declared in his *futwa*, that the prisoners were convicted only of acting contrary to the orders of Government, in allowing the woman to be burnt. In this *futwa* the Judge of Circuit observed, that he did not agree, as it was proved that Juddoonath actually set fire to the pile, however much he might be justified in so doing by the customs and religion of the Hindoos. He therefore referred the case for the final orders of the superior Court.

* Postcremation, in contradistinction to *Suhamurun*, or concremation.

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Case of JUDDOONATH and others.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Juddoonath Misser, Parusnath Misser, and Pershaud Chowdhree of assisting in the *suttee* of Mussummaut Toofa, declared them liable to *Acoobut* for the offence.

The Court (present C. Smith) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoners Juddoonath Misser, Parusnath Misser, and Pershaud Chowdhree to be confined without labour and irons for the term of six months.

1824.
Mar. 31st.
Case of AJAIB and SOOKHRAJ.

GOVERNMENT,
against
AJAIB and SOOKHRAJ.

Charge—PERJURY.

On conviction of swearing falsely to the identity of two persons whom the Magistrate had by way of device placed among the defendants, the Court, under the circumstances of the case, did not deem it adviseable to award any punishment.

THE prisoners were tried at the 2d sessions of 1823, for zillah Ghazeepore, charged with the offence of having wilfully perjured themselves in the manner following. In a case of assault pending before the Magistrate of the above-named district, wherein the prisoners were witnesses for the plaintiff, that officer caused some indifferent persons to be mixed with the defendants, and on the prisoners being desired to point out the persons concerned in the assault, Ajaib pointed out one of the persons introduced by the directions of the Magistrate, and Sookhraj pointed out three. The persons pointed out by the prisoners as having been engaged in the assault were of course wholly unconcerned in that case, being indifferent bystanders who had come to the *cutcherry* on their private business. The prisoners admitted the mistake they had made, but denied that it was intentional.

The *futwa* of the law officer of the Court of Circuit declared the prisoners convicted of perjury on their own depositions, and liable to discretionary punishment; and being of opinion that six months imprisonment would be sufficient, the Judge submitted the case for the consideration and orders of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Ajaib Rajpoot and Sookhraj Chumar of perjury, declared them liable to *Acoobut* for the offence.

The Court (present C. Smith and J. Ahmuty, officiating Judge) concurring as to the fact of the perjury, adverting to its nature, thinking it not unlikely that it might have been unintentional, and not deeming it advisable to give their sanction to the artifice by which the witnesses were entrapped into the offence, did not judge proper to award any punishment against the prisoners, and desired that they should be forthwith discharged.

1824.
May 19th.
ALLAH BUKHSH'S case.

ALI MOOHUMMUD,
against
ALLAH BUKHSH.

Charge—MURDER.

Conviction of killing a thief with a club, no resistance having been made on his part, and no effort to seize him having been made by the prisoner: sentence, one year's imprisonment.

THE prisoner Allah Bukhsh was charged with the murder of Moteeoollah, the brother of the prosecutor, by severely beating him with a club. The trial came on at the 1st sessions of 1824, for zillah Jessore. The leading facts of the case, as detailed in the confession made by the prisoner to the Police Darogha, which was the principal evidence against him, were as follow. The plantain and sugarcane plantation of the prisoner had been repeatedly robbed at night, which determined him to keep watch, in order to detect the offender. One night, while thus employed, he saw two persons in the act of robbing his plantation. One of the two happening to come within his reach, he struck him two blows with a cudgel, the first of which took place on his head. The man ran a short distance, and fell. His companion made a blow at the prisoner with a club, which he warded off, and called out to some of his neighbours by name. They repaired to the spot, and aided the prisoner in conveying the wounded man to the house of Kifayutoollah, the prisoner's maternal uncle; after which some of them returned with the prisoner to the scene of the occurrence, and he pointed out to them the bunches of plantains and sugarcane plants which the deceased was in the act of carrying off with him when assailed by the prisoner. The witnesses for the prosecution, Husnoo, Saleh Moohummud, and Kifayutoollah fully corroborated the prisoner's statement of the circumstances which occurred after his attack on the deceased. It was in evidence that the deceased died in about an hour after he had been conveyed to the house of Kifayutoollah; and it seemed that the blow which took place on his head, in all probability fractured his skull. The weapon, produced in Court, with which the prisoner struck the deceased, was a stout bamboo, five feet in length. In his defence before the Court of Circuit, the prisoner made nearly a similar statement to that contained in his confession to the police Darogha; and alledged, that he attacked and struck the deceased without a prior attempt to secure him, because he could not cope at once with him and his companion.

The *futwa* given on the trial convicted the prisoner of wilful murder, but declared *Kissas* to be barred by the peculiar circumstances of the case, and that the prisoner was liable to *Deeut* only. The Judge of Circuit was not prepared to coincide with the *futwa* as to the extent of the prisoner's guilt; observing, that though he might not have been justified in striking the deceased with a dangerous weapon, without some previous endeavour to apprehend him, and some offer of resistance on the part of the latter; yet it did not appear that any enmity existed between them; and it was evident that the deceased was detected by the prisoner in a felonious act, and the

1824.
ALLAH BUKHSH'S case.

intention to kill was not fairly inferrible from the nature of the case. Under these circumstances, the Judge expressed his opinion, that the crime of the prisoner did not exceed culpable homicide of an unaggravated nature, and that a sentence of one year's imprisonment would be fully adequate to the offence.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Allah Bukhsh Moosulmaun of killing the prosecutor's brother, while the deceased was stealing the prisoner's sugarcane, declared *Kissas* to be barred, and *Deeut* incurred; and the Court, (present C. Smith,) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Allah Bukhsh to be confined for one year.

1824.
June 4th.
Case of JEEWUN and others.

DEWAN GHAZEE,
against
JEEWUN, and seven others.

Charge—ASSAULT and HOMICIDE.

In a case of assault attended by homicide and beating, the Judge of Circuit recommended that stripes should be inflicted; but the Nizamut Adawlut, deeming that punishment inappropriate, sentenced the prisoners to imprisonment only.

THE prisoners Jeewun Ghazee, Buksh Mahomed, Ghurreeboollah, Manah Ghazee, Arrah Ghazee, Mehendy Meah, Amjud Meah, and Haree Meah, were charged with the commission of an affray, attended with the murder of Jeewun Putwaree, brother of the prosecutor, and tried for that offence at the second sessions of 1823, for zillah Tipperah. The circumstances of this case were as follow. In the year 1229, B. S. the prosecutor, conjointly with eight other persons, took in farm *(Dur Jjarah)* the Mouza of Phend Pooshkurnee, for two years, from the *Jjarahdar* Calee Kishen, and obtained possession. The deceased Jewun Putwarree was the person appointed by the sharers to make the collections. On the 4th of Sawun 1230, corresponding with the 18th of July 1823, he was proceeding through the village, when he met with Arrah Ghazee, one of the prisoners, whom he stopt, and demanded of him some arrears of rent. Arrah Ghazee remonstrated, would neither pay the rent demanded of him, nor, as proposed by the deceased Jeewun Putwaree, proceed to the *Cutcherry* of the farmer to settle the claim, but called out aloud; when he was joined by the other prisoners, who violently assaulted the deceased, and struck him with cudgels on the head. He received four severe wounds on different parts of his body, and in consequence died in about half an hour subsequent to the assault. It was clearly proved in evidence, that the wounds were inflicted by Buksh Mahomed, Ghurreeboollah, Manah Ghazee, and Arrah Ghazee, and that Jeewun Ghazee trampled on his chest. The whole of the prisoners were present armed with sticks, and assisted in the assault. Jeewun Ghazee, in his defence, denied being concerned in the assault. He stated, that he went to the spot, where he heard some persons quarrelling, and reached it after the

1824.

Case of JEEWUN and others.

dispute had ceased. He admitted, that between himself and the prosecutor there was a dispute about the rent of the *Mouza*, within which he held some rent free land, which the prosecutor wished to deprive him of. Buksh Mahomed denied assaulting any one. He alledged, that the *Mouza* was formerly rented by him; but had since been taken in farm by the prosecutor and his party, on which account between himself and the prosecutor an enmity existed; that hearing a noise, he went to the spot, and saw that the people of the prosecutor had seized Arrah Ghazee. Ghurreeboollah also denied the assault. Manah Ghazee admitted that the prosecutor and eight others took the farm of the *Mouza*. He alleged, that he held some land in that village on a *jumma* of 11 rupees, on a *pottah* from the prosecutor, which he paid in full, and in excess one rupee as *Khurcha*; and that on the day of the dispute, Jeewun Putwarree and others laid hold of Arrah Ghazee for a *baigar* or coolee. Arrah Ghazee asserted, that the prosecutor and his party seized him for a *baigar*, and beat him. The remaining prisoners simply denied being concerned in the assault. The depositions of two persons were taken as evidence on the part of the prisoners, when, finding from their statement of the case that they corroborated the charge of the prosecutor, the prisoners remonstrated against further evidence being taken; which the Court complied with. The Judge of Circuit was of opinion, that the assault was clearly proved, and that it caused the death of Jeewun Putwarree, by the wounds inflicted on his head by Buksh Mahomed, Ghurreeboollah, and Manah Ghazee, and that Jeewun Ghazee did, when the deceased had been struck to the ground, inhumanly trample on his chest. The prisoners were all related to each other; the three first being brothers; the two next their cousins, and the three last sons of Buksh Mahomed and Jeewun Ghazee. The four first, the Judge considered the most culpable, and in an equal degree: Arrah Ghazee in the next degree. But the three last being mere accessaries, led into the scrape by their fathers, and being mere youths, scarcely arrived at years of discretion, he thought they should not be subjected to any further punishment than what they had already experienced of nearly a twelve month's imprisonment.

The *futwa* of the law officer of the Court of Circuit declared the five first prisoners guilty of culpable homicide, and liable to discretionary punishment; and the remaining three entitled to their release, in which the Judge concurred; and, as the homicide was unintentional, but committed in the prosecution of an unjustifiable design, he deemed Jeewun Ghazee, Buksh Mahomed, Ghurreeboollah, and Manah Ghazee deserving of 25 stripes of the *corah* each, and 10 years imprisonment with hard labour; Arrah Ghazee of 25 stripes of the *corah*, and 7 years imprisonment with labour. The remaining three he directed to be released.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Jeewun Ghazee, Buksh Mahomed, Ghurreeboollah, Manah Ghazee, and Arrah Ghazee of assault attended with homicide and beating, declared them liable to *Acoobut* for the crime.

By the Court. C. Smith (2d Judge.) "I would not give stripes, as not being appropriate; but, considering the homicide as of an aggravated nature, I would sentence Jeewun Ghazee, Buksh Mahomed, and Ghureeboollah to ten years, and Arrah Ghazee to seven years imprisonment, with labour. The proof is ample, the defence not proved, enmity acknowledged; but instead of assaulting their original enemies, they killed the poor Putwaree." The third Judge (J. Shakespear) concurring in the above opinion, sentence was passed accordingly*.

1824. Case of JEEWUN and others.

MUSST. NUNNEE,
against
IKRAM and five others.

1824. June 9th. Case of IKRAM and others.

Charge—THEFT, and RECEIVING STOLEN PROPERTY.

The prisoners Ikram, Suroopchunder, Ram Das, Seetul Das, and Bhugye were brought to trial at the 1st sessions of 1824, for zillah Jessore. The evidence adduced in this case was to the following effect. In the commencement of 1822, various articles were stolen from the dwelling house of the prosecutrix, to the value of 97 rupees. Information of the theft was given to the police Darogha, who, it would appear, took no notice of the communication. In February 1824, the prisoners were apprehended on other charges, and on searching their houses, a great variety of suspicious articles were found. Among these, the prosecutrix recognized the following, as part of the property stolen from her in 1822, viz. a large brass water-pot, which had been produced to the police Darogha by a man named Gobind Sha, who stated it to have been pawned to him by the prisoner Ikram; an *abkhora* found in the prisoner Suroopchund Sha's house; a brass glass cover found in that of Ram Das; a brass *tuslah* in that of Seetul Das; and a brass *thalee*, and *kutorah*, and gold nose-ring in that of Bhugye. Three female witnesses deposed to the oc-

The *futwa* of the law officer of a Court of Circuit reciting that the evidence of women alone is insufficient to prove a criminal charge, the judge referred the case; but the Court of Nizamut Adawlut

* The following opinion was communicated to the Court of Circuit for the division of Patna, on the 2d of May, explanatory of the Court's opinion as to the propriety of inflicting stripes in cases similar to the above. The opinion was circulated to the several Courts on the 2d of May 1824.

"I am desired to communicate to you, for the information and guidance of your 4th Judge, that the explanation furnished by him regarding the punishment of stripes inflicted upon the prisoner Sohrye, is by no means satisfactory; and that, in the opinion of the Court, the seventh section of Regulation XVII. 1817, was merely intended (as is manifest from the wording of the doubt which the enactment was made to explain) to limit the term of imprisonment in commutation of *Deeut* to 7 years, and not to authorize the infliction of stripes, which punishment the Court conceive, can hardly be applicable with propriety to any case of culpable homicide. The Court therefore desire, that in future your fourth Judge will refrain from awarding the infliction of corporal punishment in similar cases."

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Case of IKRAM and others.

acquitted, on the ground that, to prove a charge of receiving stolen property, it must be established that the receiver knew it was stolen at the time of his receipt of it.

currence of the theft, and stated, that they recognized these things, which belonged to the prosecutrix. The witness Gobind Sha deposed, that the water-pot was pawned to him by the prisoner Ikram for 3 rupees, and this deposition was corroborated by the evidence of three witnesses who were present at the transaction. The water-pot weighed 7 seers: its value was as many rupees. The prisoner Ikram denied having pawned this article to Gobind Sha; Ram Das denied that the brass glass cover was found in his house, which fact, however, had been clearly established; and the other prisoners claimed as their own, the articles sworn to by the prosecutrix.

The *futwa* of the law officer of the Court of Circuit acquitted all the prisoners, on the ground that female evidence alone was not sufficient for their conviction; but stated, that had the facts in evidence been deposed to by male, instead of female witnesses, all the prisoners would have been liable to be convicted of receiving stolen property, knowing it to have been stolen. The Judge of Circuit observed, that he did not subscribe to the equity or reasonableness of a law which thus rejected all female, unless supported by male evidence; and deeming the prisoners Ikram and Ram Das guilty of having received stolen property, knowing it to be such, he was of opinion, that they should be sentenced to two years imprisonment for the offence. He did not consider the evidence against the other prisoners sufficient for their conviction. One witness, examined on the part of Seetul Das, had deposed, that the *tuslah* found in that prisoner's house was his property. The gold nose-ring, found in Bhugve's house, had been proved by the evidence of the workman who made it to belong to him; and the other articles found on him, and on the prisoner Suroopchund were of that common description, which did not admit of recognition, after a lapse of two years, by the witnesses for the prosecution. In consequence of the disagreement between the opinion of the Circuit Judge and the *futwa* of his law officer, it became necessary to refer the trial.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoners of the charge of theft, and receiving stolen property knowing it to be such, declared them entitled to their release.

The Court of Nizamut Adawlut (present C. Smith and J. Shakespear) observing, that the evidence went no further than to show that the property belonged to the prosecutrix, and that to establish the guilt of the prisoners, it must be proved that they, at the time of receiving the property, knew it to be stolen, in which particular the proof was defective, directed that all the prisoners should be immediately discharged.

GOVERNMENT,
against
HURDEO and two others.

Charge—MURDER.

1824.
June 19th.
Case of HURDEO and others.

The prisoners were charged with the murder of a Burkundaz; but it appearing that the deceased and another Burkundaz had in cold blood put to death a villager, whom they had seized on a criminal charge, after they had slain a person who had come to his rescue, and while they were under no reasonable apprehension, the Court directed that the prisoners should be discharged.

THE prisoners Hurdeo, Oodye Singh, and Oomeda were charged with the murder of Khuleeloollah Burkundaz of Thana Ruboopoorah, on the 29th of November 1818, and tried for that offence at the second sessions of 1823, for zillah Aligurh. The Magistrate had committed for trial, with the prisoners above named, on the grounds of additional proof of his guilt having been obtained, a person named Bhoopa, who had been tried, and acquitted for want of proof, of the same offence at the second sessions of 1821. The Judge of Circuit, however, did not permit this person to be put upon trial again, but directed the Magistrate to make a report on the subject to the Nizamut Adawlut, and obtain the sanction of that Court to bring him a second time to trial, on the grounds of additional evidence against him having been obtained since his former trial.

The facts of this case were as follow. Two Burkundazes named Khuleeloollah and Darab Khan, (the latter examined as a witness on the former trial of Bhoopa before the Court of Circuit,) had proceeded into the moofussil for the apprehension of one Dhotali, along with others charged with a theft or robbery of cattle. These persons having obtained intelligence of Dhotali, proceeded, and meeting him on the highway, took him, although armed with a sword and spear. Having disarmed him, and bound his hands, they were (accompanied by the Chowkeedar) conducting him to the Thana, when they were met by one Sooah, who desired them to give up Dhotali. Sooah assaulted the Burkundaz Khuleeloollah, who immediately drew his sword and killed Sooah. On this the Burkundaz Darab Khan observed, that they should be assailed by the whole village to rescue their brother Dhotali, and that they had better kill him also; and then the said Darab Khan by several cuts of his sword put Dhotali to death. The Burkundazes on this fled different ways. Darab Khan escaped to the Thana, and Khuleeloollah was never heard of afterwards. This was the whole case for the prosecution on the former trial of Bhoopa before the Court of Circuit. In the Magistrate's record of commitment for that trial, there were depositions to the effect, that Bhoopa and certain other persons were seen in hot pursuit of Khuleeloollah, and nearly up with him with drawn swords. The additional evidence on the present trial consisted in the depositions of the witnesses Ramcollee and Bejoyram. Ramcollee declared he had witnessed the pursuit of Khuleeloollah by the prisoners Oodye Singh and Oomeda, and by Bhoopa. Having been told by Hurdeo that Khuleeloollah had slain their brethren, and encouraged to pursue, he followed at ten paces distant from the pursuers. He saw Khuleeloollah overtaken, and assaulted first by Oodye Singh with a club, and then by Bhoopa with a sword. The witness and others in the field then fled, and saw no

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more, but heard that the prisoners, when they returned, declared they had killed Khuleeloollah, and had cast the body into the Jumna. This witness was a *Chumar*, and it was on his complaint that the apprehension of Dhotali had been directed. It appeared also, that the Rajpoots had ill-treated and oppressed the *Chumars*, and that enmity consequently existed between them. This witness suppressed his knowledge of what he witnessed at the time, alleging that he did so from fear of the Rajpoots (the prisoners and their brethren), and because Hurdeo had absconded; but that upon Hurdeo being seen after a period of three years in the jungle, he had given information at the Thana. The witness Bejoyram was a Rajpoot, and told precisely the same narrative as to the pursuit and assault of the Burkundazes, with the addition of his having seen Khuleeloollah fall from Oodye Singh's blow, and then struck by Bhoopa with the sword, and Oomeda standing near with a club. This witness, however, seemed also to be at enmity with the prisoners and their connections, for he accounted for the suppression of his knowledge of what he afterwards declared, by saying, that the party or class of the prisoners were too strong and too many for the class to which he (the witness) belonged, and that he had suppressed what he knew from fear. The deaths of Dhotali and Sooah were described in the same manner by several witnesses. Of these facts there could be no doubt, and that Khuleeloollah was pursued, and put to death by the relatives of these persons seemed equally indisputable.

The Judge of Circuit observed, that he did not see sufficient grounds to distrust the specification of the individuals who pursued and assaulted Khuleeloollah by the witnesses Ramcollee and Bejoyram. The enmity of the witnesses, he added, extended generally to the class to which the prisoners belonged, and was not directed against individuals; that as they doubtless had the opportunity of witnessing the whole transaction, it was not presumable they would fix the facts on others than the real actors; and that the description of the whole proceeding after the deaths of the persons slain by the Burkundazes, was the most natural and probable that could have happened.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoners Hurdeo Rajpoot, Oodye Singh Rajpoot, and Oomeda Rajpoot, of the charge of having murdered Khuleeloollah Burkundaz, declared them entitled to their release.

By the Court. C. Smith (second Judge.) "I see no such contradictions in the testimony of Ramcollee and Bejoyram, as to destroy their credit. The story they tell is, as the Judge of Circuit observes, highly probable, being exactly what would naturally follow the death of Dhotali by the hands of the Burkundazes. From Jykishen's evidence too, it appears that the four prisoners were seen armed together after the fall of Sooah and Dhotali. The body of the murdered person not being found, it would be difficult to make it a case of murder; though there is little reason to doubt the fact of his having been murdered. The first charge, however, was against Bhoopa and Hurdeo only, and to these two I would confine the conviction.

Bhoopa, having been already acquitted, was irregularly committed, and must be discharged. See the circular order dated November 13th, 1826*. Hurdeo I would imprison till the body of Khuleeloollah is found, or Khuleeloollah appears himself alive, meaning thereby a sentence of perpetual imprisonment. Under the circumstances, as they are stated, I think Khuleeloollah and Darab Khan were justified in killing Sooah and Dhotali. The two other prisoners I would release."

By the third Judge, (J. Shakespear.) "Dhotali appears to have been apprehended by two Burkundazes and a Chowkeedar on a charge of cattle stealing. Sooah is stated to have assaulted one of the Burkundazes with a club, in order to effect the release of Dhotali. It does not appear to me to be quite clear that any necessity existed for the two Burkundazes and a Chowkeedar's killing Sooah, seeing that he was only armed with a club, whereas they had swords, and the prisoner Dhotali was bound; but admitting that the Burkundaz Khuleeloollah, being attacked by Sooah, only acted in self-defence, still the putting Dhotali to death in cold blood by three armed police officers, before any rescue was attempted, and before any of the villagers had collected, appears to me to be little short of murder, and much allowance should, I think, be made for the acts of a hue and cry raised under such circumstances. There are various contradictions in the evidence; and Hurdeo, the prisoner, proposed to be sentenced by our second Judge, would appear to have been standing ten paces off, and to have been the least active of the party when the Burkundaz was knocked down. Further, there appears to have been enmity between the witnesses and the prisoners. Under the circumstances above stated, I concur in the *futwas* of both Courts, which acquit the prisoners."

J. Ahmuty, (officiating Judge.) "For the reasons stated by the 3d Judge, I concur in the acquittal of the prisoners. The death of Sooah appears to me to have been fully justified on the grounds of the

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* The following is the Circular Order alluded to. "An instance having occurred of a Magistrate's committing a person for trial before a Court of Circuit, upon a charge for which he had previously been tried and acquitted by that Court, and the Court of Nizamut Adawlut being of opinion, that this practice, although sanctioned by the Moohummudan law, is inconsistent with established principles of justice, they desire, with the view of preventing any similar occurrence in future, that you will instruct the several Magistrates in your division, not to commit or hold to bail for a second trial before the Court of Circuit, any person already tried and acquitted on the same charge, by a competent tribunal, whether the Court of Circuit or Nizamut Adawlut. This order, however, is not intended to preclude the Magistrates from committing for trial before the Court of Circuit, in cases cognizable by that Court, persons who may have been before apprehended and discharged by a Magistrate from want of evidence; if further evidence in support of the charge should appear to warrant the measure. The Court will include a provision to the above effect in some future Regulation, and will at the same time propose an extension of it to the Courts of Circuit, (who are now required to regulate their proceedings by the opinions of their law officers on all points of law,) so as to restrict them from proceeding on the trial of persons already tried and acquitted by a competent tribunal, if a second commitment in any such case should be hereafter made by a Magistrate.
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attempt to rescue the prisoner, and of self-defence; but I agree with the third Judge, that, in putting Dhotali to death in cold blood, the Burkundazes were guilty of a most atrocious act, uncalled for by any necessity."

The prisoners were, in conformity with the above opinions, acquitted accordingly.

1824.
June 30th.
Case of PURSUN SINGH and others.

GOVERNMENT,
against
PURSUN SINGH and two others.

Charge—RESCUE.

Two sepoys convicted by the *futwa* of rescue, acquitted by the Nizamut Adawlut, on the ground of their having acted in obedience to the orders of a Havildar, their immediate superior. The Havildar was also acquitted, he having received instructions from a person whom he deemed himself bound to obey.

THE prisoners Pursun Singh, Hurry Singh, and Bholanath Singh, who are soldiers of the Burdwan Provincial Battalion, were charged with having rescued from the custody of the police, and the Magistrate's officers, two persons belonging to the Santipore Commercial Factory, who were under arrest for a resistance of process, attended with aggravating circumstances. Their trial came on at the first session of 1824, for zillah Nuddea.

The offence, as stated in the charge, was clearly established by the evidence for the prosecution against the prisoner Hurry Singh and Bholanath Singh sepoys, who alleged in their defence, that they had acted under the orders of the Havildar Pursun Singh, their immediate commanding officer; and had brought away the individuals under arrest from the Thana, with the sanction and concurrence of the police Darogha Pursun Singh. The Havildar alleged, that he had sent the sepoys to bring those individuals from the Thana, by the direction of the head-writer of the Santipore Factory, whose orders he considered himself bound to obey.

The *futwa* of the law officer of the Court of Circuit, given on the trial, convicting Hurry Singh and Bholanath Singh of rescuing the persons under arrest, and the Havildar Pursun Singh of giving them orders to that effect, declared them all liable to *Tazeer*. The Judge of Circuit concurred in the *futwa* with reference to Pursun Singh; but entertaining doubts as to how far the two sepoys would, with safety to themselves, have been justified by the military code in refusing obedience to the orders of their immediate superior officer, he deemed it expedient to refer the case for the orders of the Nizamut Adawlut. The infliction of a fine of 200 rupees on Pursun Singh, commutable, if not paid, to confinement for six months, would, he observed, be fully adequate to the purposes of chastisement and example.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Bholanath Singh and Hurry Singh sepoys, of rescuing two persons in confinement at a police Thana, and the prisoner Pursun Singh Havildar, of having ordered the same, declared them liable to *Tazeer* for the offence.

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Case of PURSUN SINGH and others.

By the Court. C. Smith, (second Judge.) "I agree with the Judge of Circuit, as to the sepoys, that they stand protected by the order of their superior; nor do I see why the same defence may not avail the Havildar, who may have thought himself bound to obey the instructions of the head-writer of the factory. I doubt too, whether there was in fact any such violence as could be called rescuing the two defendants from the custody of the Thana. Even if I thought the Havildar punishable, I should think a fine of 200 rupees much too heavy. It must exceed a whole twelvemonth's pay. The object in getting away the defendants from the Thana seems to have been the good of the factory, not a personal one. Upon the whole, I am of opinion the prisoners should be acquitted."

The officiating Judge (J. Ahmuty) concurred in this opinion, observing, that as the head-writer of the factory was the original cause of all the mischief, and the rescue seemed to have been attended with no serious violence, he agreed in the acquittal of all the three prisoners. The prisoners were acquitted accordingly.

MEAN KHAN,
against
SHUHAMUT KHAN.

1824.
July 31st.
SHUHAMUT KHAN'S case.

Charge—MURDER.

Prisoner, aged sixteen years, convicted of theft, attended (without the privity and intent of the prisoner) with murder; sentenced, under all the circumstances of the case, to 30 rattans and seven years imprisonment.

THE prisoner was tried at the 1st sessions of 1824, for zillah Ramgurh, for the murder of Musst. Jeeun, the prosecutor's sister. It appeared from the evidence, that, on the night of the 21st April 1823, as a woman named Jeeun was sleeping in the court-yard of her house, she was suddenly awakened by some noise, and saw the prisoner standing there. On asking him what he wanted, he said that his father Soopun Khan had been beating him, and that he was therefore come to sleep in her (the deceased's) house. The prisoner being her cousin, the deceased took hold of him by the hand, with the intention of taking him to her uncle to ascertain whether his story was true or false, when she was attacked and severely wounded by some person with a sword; that she immediately cried out, "Shuhamut Khan (the prisoner) is murdering me;" and that she persisted in accusing him of the act till the time of her death, which happened early the ensuing day. These circumstances were proved by the evidence of Mean Khan (the deceased's brother), who was alarmed by a neighbour calling him to the house of the deceased, and by his mother. The deceased was the wife of an absent sepoy, and the prisoner (her cousin) was not more than sixteen years old. The village being assembled when the alarm was given, all the inhabitants were found, with the exception of Jugroop Pasban, who appeared to have been absent on some business, and the prisoner Shuhamut, who was seen running off at a little distance from the village, immediately after the murder, and

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who was shortly after apprehended at Gya, with a *huslee*, which was alleged to have been worn by the daughter of the deceased on the night of the murder. The prisoner made several confessions varying more or less in the particulars, but all of them agreeing in the statement, that he went and was present at the time of the murder.

From all the circumstances of the case, the Judge of Circuit considered the prisoner as convicted of murder. "The motives of the crime," he added, "whether cupidity, revenge, or lust, appear to be of little moment; as the anxiety with which the relatives of native women who are murdered conceal the truth from our knowledge, and our own ignorance of their habits and modes of thinking, generally preclude us from forming any correct opinion on the subject. I do not feel myself competent to dispute the legal objection of the law officer to the responsibility of the prisoner, on the plea of nonage; but from a very attentive observation of his demeanour, I feel satisfied, that he must be held in every sense of the word a responsible agent, with a mind capable to conceive, and a hand to execute any deed to which his passions might prompt him. Therefore, calling to mind our legal maxim, that "*malitia supplet ætatem*," I consider it my duty to recommend that he be sentenced to suffer death. I trust that the acquittal of the prisoners Bheem and Jugroop, against whom there does not exist a shadow of proof, may appear satisfactory to the Court."

The *futwa* of one of the law officers of the Nizamut Adawlut, convicting the prisoner Shuhamut Khan, of accompanying the murderer of the prosecutor's sister, and at the time of the murder, receiving a *huslee* which had been taken by his accomplices from the neck of the deceased woman's daughter, declared him liable to *Tazeer* for the crime.

By the Court. C. Smith, (second Judge.) "It strikes me to be most probable that the prisoner was not alone, but that, while the deceased was conveying him to his father Soopun Khan, some one of his accomplices cut her down with a sword. She distinctly said, that she saw no weapon, which is scarcely possible had a sword been in the hand of the person whom she was leading. I do not, therefore, regard him as the murderer of the deceased, nor do I think it established that he at all intended her death: but I believe that he went to the house for the purpose of theft, when circumstances that gave reason to fear detection and apprehension, induced some one of the party to wound the deceased for the purpose of rescuing the prisoner Shuhamut. He is clearly very young, and seems to have been generally called Shuhamut *Ch'hokra*. In short, I concur with our *futwa;* and adverting to all the circumstances of the case, and the youth of the prisoner, I would sentence him to seven years imprisonment with hard labour and 30 rattans."

The officiating Judge (J. Ahmuty) concurring in this opinion, the following sentence was issued. "The Court, deeming the prisoner guilty of theft, attended (without the privity and intent of the prisoner) with murder, and adverting to the prisoner's youth, and to all the circumstances of the case, sentence the prisoner Shuhamut Khan to

receive 30 strokes of the rattan, and to be imprisoned with hard labour for the term of seven years from the present date. The Court observe, that the remaining two prisoners have been acquitted and released by the Court of Circuit.

1824.
SHUHAMUT KHAN'S case.

NETTYE SEIN, *against* SULEEM.

1824.
Aug. 26th.
SULEEM'S case.

Charge—BURGLARY and THEFT, attended by Violence.

THE prisoner was charged, by the prosecutor Nettye Sein, with having robbed him under aggravated circumstances, and for that offence was brought to trial at the June monthly sessions of 1824, for the city of Moorshedabad. It appeared, that at 12 o'clock at night, in the month of Phalgoon, 1230, F. S. (February 1824,) the prisoner Suleem (who was a coachman in a gentleman's employ) attempted to gain an entry into the prosecutor's house, by making a hole in the wall; but failing in his attempt to do so by this mode, he ultimately forced open the door of the house, and effected his object. On entering the house, the prisoner seized the wife of the prosecutor, and attempted to force from her feet and arms some silver ornaments; but, on the woman's giving the alarm, her husband (the prosecutor) came to her assistance, when a scuffle ensued between the prosecutor and the prisoner, who being the most powerful man of the two, succeeded in throwing the prosecutor into a well full of water, adjoining the verandah of the house; but the prosecutor escaped falling to the bottom of the well by laying hold of the projecting parapet that surrounded the mouth of it. Whilst this struggle between the prosecutor and the prisoner was going on, the prosecutor's wife made her escape to a neighbour's house close at hand, whither she was soon after followed by the prisoner, who tore from her legs and arms the silver ornaments above mentioned, valued at 66 rupees. The prisoner on trial pleaded not guilty; but he was known to the prosecutor, the prosecutor's wife, and her brother, previously to the robbery, and his person as well as his voice were recognized, at the time he committed the outrage, by the three above-mentioned persons. The prisoner's seizure of the silver ornaments from the feet and hands of the prosecutor's wife, in the house of one Kunhia (whither she had fled for protection) was also satisfactorily established by six creditable witnesses. The prisoner's attempt to throw the prosecutor into a well, which constituted the principal ground for concluding, that his object in doing so was to commit murder, was proved by the statement on oath of the prosecutor, and by the evidence of his brother-in-law, as well as by the circumstantial evidence of blood having been seen on the prosecutor's head, which was supposed to have issued from a

The prisoner being charged with burglary and theft, the Court with reference to all the circumstances of the case, convicted him of assault and outrage, and sentenced him to seven years imprisonment.

1824. SULEEM'S case.

wound inflicted by the prisoner on the prosecutor, whilst he continued tistruggling in a suspended attitude at the mouth of the well.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of theft, attended with cruelty, as well as of an attempt to commit murder, in which the Judge of Circuit fully concurred, and he accordingly submitted the trial for the final orders of the Court of Nizamut Adawlut.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Suleem coachman, of having entered the prosecutor's house at night, pursued his wife, who had fled into another house, and taken her ornaments from her by force, declared him liable to *Acoobut* for the offence. Of the charge of having thrown the prosecutor into a well, with an intent to kill him, it acquitted the prisoner.

The Court (present C. Smith and J. Shakespear) deeming the prisoner guilty of an outrageous assault, and of having violently entered the prosecutor's house at night, and pursued and insulted his wife, sentenced him to be imprisoned with labour for seven years.

1824. Sept. 17th. KHADOORAM'S case.

SHEIKH ARRUFFOODEEN, *against* KHADOORAM.

Charge—MURDER.

The prisoner (a sepoy) being convicted of shooting among a crowd, whereby a boy was killed, sentenced, under the circumstances of the case, to five years imprisonment.

THE prisoner Khadooram was charged with the murder of Dengar, son of the prosecutor, to which he pleaded not guilty. The case was in substance briefly as follows. The prisoner, a sepoy of the 2d Battalion, 26th Regiment Native Infantry, with Gireewar Singh, another sepoy, and Cossinaut Sirkar, had received charge of six elephants from the Commissariat officer at Dinapore, and was proceeding towards the city of Dacca, when, at a place called Sataeesgaon, they on the 21st June, seized a villager, to point out to them the road. The inhabitants assembling in a body, and coming to rescue him, the prisoner twice fired his loaded musquet into the crowd, and the latter shot unhappily took effect, the ball having struck the deceased, a boy of about 13 or 14 years of age, a little above the left eye, and escaping at the back of his head, immediately caused his death. The defence set up by the prisoner was, that he had charge of treasure, that the villagers assembled in a riotous manner with clubs, broke the lock of the *pittarah* which contained it, and attacked the escort, and that he twice fired at the crowd for the purpose of dispersing them, conceiving it his duty so to do.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of wilful murder, and declared him liable to *Kissas*. In this verdict the Judge did not concur; but being of opinion,

1824. KHADOORAM'S case.

that the crime of culpable homicide was fully proved, and considering the prisoner deserving of severe punishment by imprisonment for some years, the case was referred for the final orders of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Khadooram of *Kutli Khuta*, and quarrel which ended in the death of the prosecutor's son, declared him liable to *Deeut* and *Acoobut*.

The Court (present C. Smith) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Khadooram to be imprisoned with labour for the term of five years.

1824. Oct. 8th. Case of MUSST. NUNDOO and others.

GOVERNMENT,
against
MUSST. NUNDOO and two others.

Charge.—MURDER.

Conviction of causing the death of a pregnant woman in an attempt to procure abortion. Sentence, seven years imprisonment.

THE prisoners were tried at the 2d sessions of 1824, for Humeerpore; Mussummaut Nundoo, being charged with causing abortion of Mussummaut Ranee, who died in consequence, and Munsook and Kashee with advising Nundoo to the commission of such act. The following statement of the case was furnished by the Judge of Circuit. The fact is established against Mussummaut Nundoo, by the evidence of Subsook and Bhugwan, who were eye-witnesses to her mode of proceeding, to induce what she is charged with having accomplished. It does not appear in evidence, whether the operation was performed with or against the consent of the deceased Mussummaut Ranee; but, however this may have been, the death which ensued was its direct consequence; not to mention the destruction of the embryo, which may be said to constitute a second murder. The confession of the prisoner Mussummaut Nundoo is probably correct. All that need be observed upon it, (in addition to its corroborating the evidence of Subsook and Bhugwan,) is, that it proves the present offence to have been preceded by others of a similar nature, in which she was the agent. It would seem indeed, that what she has at length been convicted of, has been practised, and that not secretly, as an avowed and successful profession. Munsook, the brother of the deceased, charged with having employed Mussummaut Nundoo in the transaction; and Kashee, the messenger who summoned her, have been acquitted and released. Ramsing, the paramour of the deceased, has not been apprehended. If the prisoner Mussummaut Nundoo be not deemed by the Nizamut Adawlut convicted of an offence that legally affects her life, she should, I think, be condemned to imprisonment, with labour, for a period of not less than fourteen years.

1824.
Case of MUSST. NUNDOO and others.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Mussummaut Nundoo of having caused the abortion, and thereby causing the death of Musst. Ranee deceased, declared her liable to *Acoobut* for the crime.

By the Court. C. Smith, (second Judge.) "There seems no room to doubt the fact; but the intent to kill does not appear, and the prisoner appears to be an inhabitant of an independent territory, and to have been brought into the Company's territory to cause the abortion of the deceased woman. If she follows the profession, she has done it in a foreign territory, the laws of which do not, I suppose, disapprove of it. It strikes me, that, under these circumstances, the punishment the Judge of Circuit would award is greater by much than the case calls for. I would sentence the prisoner to three years imprisonment in the Humeerpore jail."

By the fifth Judge, (W. B. Martin.) "I cannot think that the punishment of three years imprisonment is sufficient for the offence clearly established against the prisoner. It is evident, that when she came to the house of the deceased, for the avowed purpose of procuring the abortion, she was fully aware of the criminality imputed by our law to the transaction; and I would therefore sentence her to seven years imprisonment."

By the officiating Chief Judge (J. H. Harington.) "The crime of which the prisoner is convicted has been adjudged murder in England, (see Hale's P. C. Vol. I. p. 429, and note to page 230, of Eden's Principles of Penal Law.) It has not, however, been so ruled or declared in this country; and under all the circumstances of the case, I concur with the 5th Judge in the sentence proposed by him of seven years imprisonment."

A sentence of seven years imprisonment was issued accordingly.

1824.
Oct. 9th.
Case of MAHOMED HOOSEIN and others.

HURREENATH SAHOO,
against
MAHOMED HOOSEIN and five others.

Charge—MURDER.

The prisoners being charged with making away with two individuals, who with their property had embarked on the prisoners'

THE prisoners Mahomed Hoosein *alias* Mahomed Roushun, Sauduck, Asud Oollah, Pokye Merdah, Sudder Oodeen *alias* Saudoo, and Zea Oollah, were tried at the first sessions of 1824, for zillah Dacca Jelalpoor, charged with having, as the calendar described, made away with two persons of the names of Radhanaut Dutt and Bunseebuddun Sahoo. The circumstances of the case were as follow. Jynarain Sahoo, an agent resident at Naraingunge, hired a boat of the two prisoners Zea Oollah and Mahomed Hoosein, loaded it with rice, and sent it in the month of Sawun last to his constituent, Ramsunkur sircar, a merchant and trader, residing at Butkehmarry in the district of Dacca Jelalpoor. The other prisoners were the *Mullahs* of the

1824.

Case of MAHOMED HOSSEIN and others.

boat, and Mahomed Hoosein proceeded with it as *Manjee*. Radhanaut Dutt, one of the missing men, was the *Churundar* in whose charge the goods were placed. Ramsunkur Sircar and others stated in evidence on the trial, that the boat duly arrived at Butkehmarry, where some of the rice was sold, and the remainder taken out of the boat, and stored up in a golah. They then put a fresh cargo of sugar and molasses on board, and with the said Radhanaut Dutt and the other missing man, Bunseebuddun Sahoo, proceeded, according to the directions of the proprietor of the goods, to Serajgunge, where they arrived in the succeeding month, Bhadoon. It was in evidence also, that on their arrival at Serajgunge, they sold a small part only of the cargo, and that they left the place in the month of Assin, taking with them the remainder of the goods, and the produce in cash of that portion they had disposed of, with the intention of returning to Butkehmarry; and that since that period, neither the two men nor the goods had been heard of. Such was the story for the prosecution; and that related in the defence admitted it in every item as far as the arrival at Serajgunge. Mahomed Hoosein, the *Manjee*, stated, that the greatest portion of the cargo of the boat was disposed of at Serajgunge, and that with the little that remained, they left that place with the intention of returning to Butkehmarry. But while on the way, the two agents altered this plan, and stopt at a place called Muttoorah to search for a smaller boat; and not finding one there, they proceeded on to the Bundur of Selimpoor, where they procured one, and on it put the cargo, and with it proceeded to their home at Butkehmarry. His boat being discharged, he and his crew returned to their homes near Naraingunge. The *Mullahs* deposed to the same effect.

boat, and had not been heard of since last seen in the prisoners company, pleaded that the missing persons had parted with them of their own accord. Although they had no evidence to their defence, the Court of Nizamut Adawlut did not deem the proof sufficient for their conviction, and they were acquitted.

In submitting this case for the consideration and orders of the Court of Nizamut Adawlut, the Circuit Judge accompanied it by the following observations. "Cases of this kind are common in this (Dacca) and other districts of Bengal, and are of so horrible a nature, that I regret exceedingly there is no evidence to bring the offence clearly home to the prisoners: such cases must at all times be difficult of proof, and perhaps not one in an hundred can be established, except on circumstantial evidence. This, I think, has sufficient to convict on violent presumption; producing in my own mind, a conviction of the guilt of the prisoners, almost approaching to certainty. Jynarain Sahoo, the agent who despatched the boat from Naraingunge, met with the prisoner Mahomed Hoosein, the *Manjee* of it, some months after at Naraingunge; and on questioning him on the subject, Mahomed Hoosein told him, that he had been discharged at Serajgunge; omitting all mention of the story and circumstances, as declared by him to have occurred at the Bundur of Selimpoor. When asked by Jynarain Sahoo for a receipt, or some written acknowledgment of having been discharged, he said that the *Churundar* had not given him one. Mahomed Hoosein states, that he started from Naraingunge on the 15th or 16th of Sawun, with one and a half month's hire of the boat in advance, and returned to it in the end of Assin, having received no further pay during the trip. On these two points I have to remark,

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Case of MAHOMED HOOSEIN and others.

that they carry with them little probability of truth. Having engaged his boat for the trip, it is not likely he would have been discharged without a receipt, which of course he would have taken, and shewn to his employer. Had he been honestly discharged, he would have sought the first opportunity of meeting with his employer, acquainting him with the circumstance, and demanding his arrears of one month and a half hire, which Jynarain Sahoo denies he ever did. I have made enquiries, and know it to be a custom with the owners and *Manjees* of boats, employed to convey merchandize from one part of the country to another, never to suffer themselves to be discharged without, for their own satisfaction, and that of the persons who engage their services, receiving a written acknowledgment to the effect, and which generally contains a statement of what sums of money they have received during the trip, and what remains as due to the *Manjee*. The prisoners named three persons, who reside near the Bundur of Selimpoor, to corroborate the fact, that they arrived there with their boat and the two missing men, and that the latter left them; taking with them their remaining goods in a small boat. These three witnesses declare they know not even the names of the two missing men, and never before saw the faces of the prisoners. Mahomed Hoosein has had the evidence of two prisoners in jail to establish, that one of the missing men, by name Bunseebuddun Sahoo, was seen by them last Kartic. They declare they know not such a person, and never saw him. The Bundur of Selimpoor is a large mart established for the storing up and disposal of merchandize, principally grain. Had the circumstances occurred as related by the prisoners, it would not be a difficult matter for them to name and produce witnesses to corroborate their story. They even know not the name of the *Manjee* or any of the *Mullahs* of the small boat into which, they assert, the two agents transferred their goods. Though it must have taken many hands and much time to disembark, and reload them into another boat, and had such been done, it would have been a matter of notoriety in a place of such public general resort as the Bundur of Selimpoor is, where every day a large concourse of people assemble to transact their various occupations. The case contains many other particulars that throw additional suspicion on the prisoners; considering the whole, and the heinousness of the crime, I am of opinion, the prisoners should be kept in confinement on labour, till such time as the two missing men make their appearance, or it is satisfactorily established that they were not the cause of their death."

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoners, Mahomed Hoosein *alias* Mahomed Roushun, Sauduck, Asud Oollah, Pokye Merdah, Sudder Oodeen *alias* Saudoo, and Zea Oollah of the charge, declared them entitled to their release.

The Court of Nizamut Adawlut (present C. Smith and J. Shakespear), observing, that though this was a suspicious case, yet such a sentence as the officiating Judge recommended could not be passed; and, at the same time, considering that from the nature of the

1824.
Case of MAHOMED HOOSEIN and others.

case, there was no medium between that and acquittal, concurred in the *futwa*, and directed that the prisoners should be forthwith discharged. The officiating Judge appearing to have taken the answers of the prisoners at length before taking the evidence on the part of the prosecutor, the Court desired his attention to section 47, Regulation IX. 1793; agreeably to which the first answer of the prisoner should be confined to his pleading guilty or not guilty, and his answer in detail, that is, his defence, be taken after the evidence on the part of the prosecutor is completed.

1824.
Nov. 1st.
Case of UMROODH THAKOOR and others.

LIVINGSTONE and DHEERUJ, *against* UMROODH THAKOOR and eleven others.

Charge—AFFRAY, attended with HOMICIDE.

That a party engaged in an affray was not the aggressing party, is no ground for a remission of sentence; though the Nizamut Adawlut, in awarding punishment, may no doubt admit the circumstance to operate in mitigation.

THE prisoners Umroodh Thakoor, Mahabul, Sreekishen, Chooramun, Dhootal, Boodha, Bhurosee, Oomah, Cawul, Buckuth, Luchmee and Chadee, were tried for the above-named offence at the 1st session of 1824, for zillah Sarun. It appeared from the evidence on the part of the prosecution, that on the morning of the 7th of May, the prosecutor Livingstone (the European assistant to Mr. Anderson, an indigo planter) went with about ten ploughs to sow indigo in some fields near the factory, which had been previously prepared for the purpose. Upon this Sreekishen, one of the proprietors, went up to him, and told him to desist ploughing, no engagement having been entered into respecting the cultivation of the lands for the current year. After some altercation, during which it seems that the boys of the village hooted him, and pelted him with clods, Livingstone mounted his horse, proceeded to the factory, and returned again to the field in company with his employer. The dispute now recommenced, the planters persisting in their endeavours to plough the land, and the proprietors in theirs to prevent it.

In the opinion of the Circuit Judge, the matter to be decided appeared to be, the legality or otherwise of their respective purposes; the blows following as a matter of course, in consequence of pursuing those purposes. In the present case, it appeared to him difficult to determine, from the want of fair and impartial witnesses, (those on the side of the prosecution being attached to the factory, and those on that of the prisoners, probably, connected with them,) on which side the assault actually commenced. He thought, however, that there was reason to believe, that Livingstone, in the first instance, laid hold of Sreekishen, as was asserted, with a view of carrying him to the factory. Indeed the witnesses on the side of the prisoners deposed to the fact of two of the proprietors having been beaten by the planters. It further appeared, that the assistant and his employer were both beaten with clubs, and a carpenter who accompanied them

1824.

Case of UMROODH THAKOOR and others.

was badly wounded on the head, and died shortly afterwards. Though there existed no positive evidence or scientific opinion tending to elucidate the cause of this man's death; yet as he expired within the fortnight, with symptoms appearing to indicate lockjaw, and had no previous complaint, the Judge conceived that it was reasonably to be presumed, that he died in consequence of the wound received in the affray. Under these circumstances, the whole of the prisoners having been convicted of being present, aiding and abetting in an affray attended with homicide, became (under Regulation II. of 1823,) liable to a sentence of five years imprisonment, with or without labour and corporal punishment. It was in mitigation of this sentence that the Judge submitted the case for the consideration and orders of the Court. In the first place, he observed, it appeared from the copy of a proceeding held by the assistant to the Magistrate, under date the 20th March, that a similar dispute had occurred between the parties on the 25th February, in consequence of the lease of the village of Rugouly (the object of dispute), which had been held by the Moonshee of the factory, from 1227 to 1230, Fussely, having expired, and the *Maliks* of 11 As. having given their shares in lease to another person, nowithstanding which, the planters wished to continue their cultivation without taking a *Pottah*, or giving a *Qubooleut*. Secondly, from a proceeding of the assistant, under date the 10th of April, it would appear that the *Maliks* had paid into Court the advances claimed by the Moonshee, and that he had been ordered to relinquish the village, his lease having previously expired. It further appeared in evidence, that, up to the day of the present affray, Mr. Anderson had taken no steps to secure to himself a legal interest in the lands in question, though the *Maliks* seem to have been very ready to have renewed the connection. Under these circumstances, the Judge expressed himself as being utterly at a loss to conceive what right or pretence Mr. Anderson or his assistant had to enter on the lands, or in any degree to interfere with the possession or cultivation of them. Should this view of the question, he added, be correct, Mr. Anderson and his assistant appeared to have been guilty of an illegal entry, or trespass on the grounds in question, and consequently to be liable to be held responsible (if any one was to be) for the consequences which resulted from their own illegal conduct. And as no other course appeared to him to have been left to the proprietors, but to resist illegal violence by force, or to be dispossessed, for a considerable time at least, of their lands, and as he had reason to believe that similar conduct on the part of indigo planters required rather to be checked than encouraged, he considered it his duty to recommend that the prisoners, who had already undergone considerable confinement and inconvenience, should be forthwith released.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners Umroodh Thakoor, Sreekissen Thakoor, Dhootal Thakoor, Oomah Thakoor, Buckuth Thakoor, and Luchmee Thakoor of affray, attended with homicide, declared them liable to *Acoobut* for the offence; and acquitting the prisoners Mahabul Thakoor, Chokramun Thakoor, Boodha Thakoor, Bhurosee Thakoor, Ca-

wul Thakoor, and Chadee Thakoor, of the charge, declared them entitled to their release. 1824. Case of Umroodh Thakoor and others.

By the Court. C. Smith, (second Judge.) "Of the 13 prisoners committed, the Court of Circuit acquits one, and has referred the case with regard to the other 12, of whom our *futwa* convicts six, and acquits the remaining six. I see no reason to acquit any of those whose case is referred, there being sufficient evidence that they were all present, and aiding in the violence used on the part of the proprietors towards the owner of the factory and his people, on the 7th of May last. That the carpenter's death was occasioned by the beating he received on that date, I have no doubt. As to Mr. Elliot's recommendation in favour of the prisoners, I do not see how, according to the existing law, it can be complied with, to the extent which he proposes; that is, a total release of the prisoners without further punishment. The rule is given in the preamble of Regulation XLIX. 1793; and is, so far as I know, unaltered to this day: "Recourse to these violent means, either for enforcing or *resisting* such claims, being not only highly criminal but unnecessary." Upon this rule our Magistrates, Judges of Circuit, and the Judges of this Court still act, the Magistrate committing both parties in an affray, and the Courts of Circuit and our Court punishing both parties. Upon the ground, however, that the prisoners may have felt, that they were resisting an oppressive proceeding of Mr. Anderson, and that Mr. Anderson's line of conduct appears to have been indiscreet and irregular, I have no objection, if another Judge concur, to lessen the *minimum* of five years, prescribed by Regulation II. 1823, to two. This, by section 17, Regulation XVII. 1817, I cannot do without another Judge."

W. B. Martin, (fifth Judge.) "Whatever may be the merits of Mr. Anderson's conduct, the violent resistance opposed to the trespass was clearly unlawful. The prisoners should not, therefore, I think, be acquitted; but for the reasons stated by the second Judge, I concur in the proposed mitigation."

Under this view of the case, the Court, deeming all the twelve prisoners equally guilty of having been engaged in an affray, attended with homicide, sentenced each of them to be imprisoned for the period of two years.

GOVERNMENT, *against* MOOMTAZ ALI.

1824. Nov. 9th. Moomtaz Ali's case.

Charge—Extortion.

Moomtaz Ali, Darogha of Thana Oondha, in zillah Jungle Mehals, was charged with extortion, and tried for that offence at the 1st sessions of 1824, for that district. From the evidence of the witnesses for the prosecution in this case, it appeared to be satisfacto-

In a case of extortion, the law officers held that those

1824.

MOOMTAZ ALI'S case.

who contributed to the extortioner's demands could not be admitted as witnesses; they being, in point of fact, plaintiffs in the cause; but the Nizamut Adawlut overruled this doctrine.

rily established, that the accused, in the course of an enquiry into a case of theft which had occurred within the limits of his Thana, demanded a general contribution from the village in which the witnesses resided; that the amount agreed upon was 88 rupees, of which 60 Rs. were collected; and that 53 Rupees and some Annas thereof were actually paid to and received by the Darogha.

The *futwa* of the law officer of the Court of Circuit given on the trial, acquitted the accused of the charge, principally on the ground, that the witnesses by whose evidence it was supported, having each paid a share of the general contribution, ought to be looked upon as plaintiffs; and that their evidence was consequently not legally sufficient for the conviction of the accused.

The Judge of Circuit dissented entirely from this doctrine. If the principle, he observed, on which this *futwa* of acquittal is founded, be once admitted, nothing more will be necessary to secure a police officer from conviction on charges of a similar nature to the present, than to be careful not to exempt a single individual in a village from the payment of a share, however small, of the general contribution, and thereby render every one incompetent to give evidence against him. He was of opinion, that the accused should be sentenced to imprisonment for a twelvemonth.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner Moomtaz Ali Darogha of the charge of extortion, on the same ground as that advanced by the Circuit law officer, declared him to be entitled to his release.

The Court of Nizamut Adawlut, however, (present C. Smith and J. Shakespear,) considering the doctrine in question to be absurd and inadmissible, overruled it; and deeming the prisoner guilty of the charge, sentenced him to be imprisoned without labour and irons for one year in the civil jail of the district.

1824.
Nov. 16th.

SUMOOT SINGH'S case.

RAMMOHUN SINGH,
against
SUMOOT SINGH.

Charge—MURDER.

Prisoner convicted of perpetrating a malicious murder by means of a heavy bamboo, sentenced to suffer death;

THE prisoner Sumoot Singh, charged with the murder of Jylaul Singh, on the 6th Bysack 1231, corresponding with the 17th April, 1824, was tried for that offence at the 1st session of 1824, for zillah Dacca Jelalpore. The circumstances of the case appeared to be as follow. The prosecutor, prisoner, and the deceased, were relations; and, when not in service, lived in the same house. But the prosecutor and the prisoner were for many years past in the employ of Moonshees Ahsun and Azeezoodeen's house, situated at Eelacheepoor. The prosecutor had left the service six or seven years back. The prisoner remained, and the deceased, a young man eighteen

years of age, occasionally went from his own house and resided with him, for the purpose of qualifying himself in reading and writing, by the means which the Moonshees' house afforded. On the 3d of Bysack, the marriage of the daughter of Soberam Singh, another relation, was to be celebrated at his house, which was adjoining the prosecutor's; for which purpose all the connections of the family had, some few days previous to the event, assembled, with about two hundred guests. On the 6th of Bysack, the deceased was lying on a *charpai* inside the prosecutor's house, whether asleep or awake was not known, but fatigued from having sat up all the preceding night. The prisoner was also in the house. The witness Musst. Nyanee was desired by her master, the prosecutor, to wash the floor of the house with cow-dung and water, preparatory to the feast being held in it. While so employed, she heard three blows, and immediately called out murder. The prosecutor was close by, and also heard the blows. On hearing Nyanee call out, he proceeded to the house. But before he could get there, another witness (Juggoo Singh) had, on hearing the cry of murder, preceded him; and, when he arrived, he saw the prisoner held by Juggoo Singh, and in his hand the bamboo club, with which he had committed the murder. Several other persons then assembled, and witnessed the circumstances. The blows were inflicted at about 3 P. M. on the 6th of Bysack, and on the next day at about 8. A. M. the deceased died. The wounds, three in number, were on the head, and of so violent a nature, that the deceased spoke not a word after he received them. The motive for the crime was not apparent from the proceedings; but there was a story of the deceased having formed a connection with a slave girl of the Moonshees' house, which displeased the prisoner, probably because it had irritated the family against the prisoner, to whom the deceased used to make visits in the Moonshees' house. The girl was not brought before the Court of Circuit, but denied before the Magistrate having any criminal knowledge of either the deceased or the prisoner.

though the act did not appear to have been premeditated, and the instrument was lying close by him at the time the murder was perpetrated.

The *futwa* of the law officer of the Court of Circuit declared on violent presumption, the offence of wilful homicide proved against the prisoner, and that he was liable to punishment at the discretion of the ruling power.

In submitting this trial, the Judge of Circuit observed: "I know not on what ground to recommend any mitigation of the full penalty of the law. The offence is clearly murder, and the instrument with which it was effected a murderous weapon, of five feet in length, a solid bamboo as thick as a stout man's wrist, and weighs about three *seers*; and the blows were repeated. But I cannot think it was premeditated; the time and opportunity are against such a supposition, and the weapon was at hand, (for it was the bamboo used to fasten the door of the house,) to accomplish what a sudden violent gust of passion irresistibly propelled."

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of the prosecutor's nephew, declared him liable to suffer death by *Seasut* for the crime.

1824.
SUMOOT SINGH'S case.

By the Court. C. Smith (second Judge.) "There does not appear a shadow of suspicion of any enmity on the part of the prosecutor and his witnesses that could lead them to accuse the prisoner falsely. The evidence shows that the weapon produced in Court was found in the hands of the prisoner with marks of blood upon it, and that when the blows were struck, there was no one in the same place with the deceased but the prisoner. The deceased was found with his brains beaten out, no doubt with the weapon above mentioned. There is reason to suppose that the prisoner was dissatisfied with the deceased, on account of his having formed an intimacy with a slave girl in the house where the prisoner served, which circumstance had chagrined the family against the prisoner. Taking the evidence of the two women, of the prosecutor, and Juggoo Singh to be true, (and it appears to me wholly uninvalidated,) I can discover no ground for imagining the prisoner to be innocent, and, as the murder was a cruel one, there can be no reason why the person convicted of it should not be sentenced to death. The prisoner does not attempt to explain at all the situation in which he was found, contenting himself with a bare and flat denial. His witnesses speak to nothing but his character, which before this seems to have been free from reproach."

The third Judge (J. Shakespear) concurring in this opinion, the prisoner was sentenced to suffer death.

1824.
Nov. 18th.
KHEDOO BUND'S case.

MADHOO,
against
KHEDOO BUND.

Charge—MURDER.

The prisoner having suddenly killed his infant nephew, without any apparent malice or motive, the Nizamut Adawlut sentenced him to be hanged; there being no proof of insanity.

THE prisoner was tried at the first sessions of 1824, for zillah Tirhoot, for the murder of his infant nephew. In this case, it appeared from the confessions made by the prisoner at the Thana and before the Magistrate, (duly proved before the Court of Circuit,) that, on the day of the fatal occurrence, he was sleeping, in the day time, at a short distance from a little child, aged about five years, his own nephew; when four evil spirits appeared to him, and told him to kill the child. Upon which he took up a *koodalee* which was at hand, and dispatched him. From the evidence in the case, it appeared that the prisoner had been absent from home for about six months with his brother (the prosecutor), and had returned the evening before the perpetration of the act. Sumood, the Chowkeedar of the village, deposed, that, about noon, he saw another little child, the brother of the deceased, crying, and was informed of the murder; upon which he went into the house, and saw the prisoner lying on the ground, the bloody *koodalee* near him, and the child dead, wrapped up in a mat.

1824.
KHEDOO BUND'S case.

As the Judge of Circuit concurred with the *futwa* of the law officer of his Court, convicting the prisoner of wilful murder; as he saw not the slightest reason to believe that the prisoner was insane then, or had been so before; and further, as he considered it highly dangerous to the peace of society to permit murderers to escape justice, merely because an European Judge, very imperfectly acquainted with the motives of action which prevail among the natives, could not discover the train of reasoning which induced them to perpetrate such diabolical acts, he declared himself to be under the necessity of recommending that the prisoner should be condemned to death.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of the prosecutor's son, declared him liable to suffer death by *Kissas* for the crime.

By the Court. C. Smith, (second Judge.) "The fact is proved beyond a doubt, both by the repeated confessions of the prisoner and by the circumstances of the case. It is equally clear, that there is no legal proof of insanity; but, in the total absence of all malice and motive, it is to be presumed that the prisoner, in killing his own nephew, a harmless infant sleeping by his side, must have been under the influence of some sudden phrenzy, of which he had never showed symptoms before, and never may again. I would therefore remit the capital sentence, and confine him for life in the zillah jail."

W. B. Martin, (fifth Judge.) "I see no reason why the prisoner should not be sentenced to undergo capital punishment. He appears to me to have perpetrated the wilful murder of an harmless child, of between six or seven years of age, in a manner the most wanton and unprovoked; and as for the plea which he has urged in extenuation of it, the admission of it would, I think, prove of the most dangerous example. I agree, therefore, with the Judge of Circuit in opinion that the prisoner should suffer death."

The third Judge (J. Shakespear) concurring with the 5th Judge, and considering a sentence of death to be appropriate in this case, the prisoner was sentenced to be hanged.

NUNDKISHORE MOOKERJEA, *against* PANCHKOUREE RAI.

1824.
Nov. 27th.
PANCHKOUREE RAI'S case.

Charge—MURDER.

The prisoner (a person of respectable connexions and easy circum-

THE prisoner above named was tried for the murder of Lalmohun, a boy aged about nine years, the prosecutor's brother, by stabbing him in several parts of his body most cruelly with a knife, and taking away his ornaments, valued at 36 Rs. The trial came on at the 1st sessions of 1824, for zillah Beerbhoom. The circumstances of this case were as follow. On the evening of the 17th June, 1824, the prison-

1824.

PANCHKOUREE RAI'S case.

stances) being charged with the murder of a boy for the sake of his ornaments, the Court, deeming the motive assigned and the circumstantial evidence adduced insufficient for his conviction, directed his release.

er went to the prosecutor's house, (which he had not before been in the habit of doing,) and was seen conversing with the children of the family. Almost immediately after this, the deceased, a boy of about nine years of age, was missing; and on search being made for him at the prisoner's house by his mother, the prosecutor (his eldest brother) and others, it was found that the prisoner was not at home, and no account could be given of him. This was about an hour after dark. The party, in prosecution of their search, had proceeded to a place called Shebtolah, about half a mile distant, when they met the prisoner, who was returning to his house. This was about three hours after dark, and he could not satisfactorily account for his absence. The prosecutor informed the Zemindars of the village, in the course of the night, that he entertained suspicion against the prisoner, (who was himself a son of one of the Zemindars;) but no measures were taken to apprehend him, or prevent property being removed from his house. Information of the circumstance was sent to the Thana on the 18th; and on the 19th some of the police officers arrived, and it was reported to them, that the body of the deceased had been found in a nullah, about one coss distant.

It should be observed, that Shebtolah, where the prisoner was met, was situated between the prisoner's house and the place where the body was found. The deceased had on him when he left his brother's house, ornaments valued at 36 Rs. and none were found with the body. The prisoner's house was searched on the 20th, when a bloody cloth was found, which he attempted to account for from the circumstance of a leech having been found in the house. Great anxiety, however, appears to have existed to conceal the circumstances of this cloth having been stained with blood. It was stated by the prosecutor, that the prisoner was in the habit of having connexion with a woman of low caste in his village (Musst. Monka Harin). Several of the witnesses (Chowkeedars of the village) deposed to that effect at the Thana, who, in the Court of Circuit, stated that they knew nothing of the matter, and that they heard it from the prosecutor after the prisoner had been apprehended. The circumstance was sworn to positively by one witness in the Court of Circuit, whose evidence, however, the Judge of Circuit did not believe; but from the circumstances of the case collectively, he was inclined, he observed, to deny the prisoner the benefit of any presumption which he might otherwise have admitted as to the improbability of a man in his situation in life committing so horrid an act for the acquirement of property of so small value. There were some trifling contradictions, he added, in the evidence of one or two of the witnesses; but they were not, in his opinion, of sufficient importance to invalidate their testimony.

The law officer of the Court of Circuit delivered a *futwa* of acquittal, in which the Judge did not agree, and forwarded the case for the decision of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner of the charge of having murdered the prosecutor's brother, declared him entitled to his release.

1824.
PANCHKCUREE RAI'S case.

By the Court. C. Smith, (second Judge.) "There is no confession, no discovery of the missing ornaments, no satisfactory proof that the prisoner took away Lalmohun; for of the children examined, the only one fit to be sworn (Tureeram) does not state that circumstance: whether the stains upon the cloths are of human blood or not, seems doubtful, and altogether unestablished is it that they are of the blood of the murdered boy. The prisoner, moreover, is respectably connected, not necessitous, and not at all likely to have engaged in so horrid an affair for the sake of a few ornaments, to him of trifling value; and no other motive but the desire of possessing himself of those ornaments is pretended. Upon the whole, I concur with the *futwas*, and think the prisoner should be acquitted."

The third judge (J. Shakespear) concurring in this opinion, the prisoner was acquitted accordingly.

GOVERNMENT, *against* MUSST. KALTEE.

1824.
Dec. 1st.
MUSST. KALTEE'S case.

Charge—MURDER.

The prisoner being charged with murder, by poisoning her rival wife, and convicted of that offence by circumstantial evidence, was sentenced by the Nizamut Adawlut to suffer death. no *futwa* taken, the case having occurred within the jurisdiction of the Commissioner of Rungpore.

THE case of Mussummaut Kaltee, accused of the murder of Musst. Ghurbaree, her rival wife, came on for trial before the Commissioner of Rungpore, on the 24th of August, 1824. From the evidence of Huzaree, an apparently artless boy of about 15 years of age, it appeared that, on the 24th of February, 1824, the witness, together with the prisoner and the deceased, both wives of one Wuzeer, (who declined to prosecute,) was eating his dinner, which had been prepared by the prisoner, when the latter requested the deceased to go to the house of a neighbour named Abeer, and ask for some cooked vegetables; that the deceased went out for the above purpose; and that, when absent, the prisoner supplied her dish with some cooked *kuddoo* from a different pot from that containing the food used by herself and the witness; that shortly afterwards the deceased returned, and said that she could not get any of the vegetables wanted; that she then began to eat the *kuddoo* supplied by the prisoner in the above manner, but soon complained of a burning sensation in her throat, and asked the witness to taste her mess, and tell her what was the matter with it; that on this the prisoner made a sign to the witness not to taste it, which he did not do; and that, on subsequently asking the prisoner why she had forbidden him, she said that a centipede had fallen into and spoilt the dish. The deponent further stated, that soon after this, he went out and fell asleep in the cow-house, and that next morning he awoke, and found that the deceased had expired. This witness was a servant in the house, entertained not long before; and he deposed, that, although there sometimes were disputes between the prisoner and the deceased, he did not perceive any

1824.

MUSST. KALTEE'S case.

greater enmity than is usual between rival wives. From the evidence of Abeer, Khyr Mohummud, Jan Mohummud, Hubboo Commedan, and others, it appeared, that about 9. P. M. on the night alluded to by the last witness, the deceased came in great distress and bodily pain to the house of Hazaree, who was not at home, and complained that the prisoner had given her poison in a dish of *kuddoo*; that the deceased was then conveyed to the house of Fakeer Bukhsh, a police Burkundaz, absent on leave, when she repeated the above declaration in the prisoner's presence, and requested those present to send for Kadir Konree (who was in the habit of using poison for killing animals) to administer an antidote; but that when Kadir arrived, she could not swallow the medicine he offered to her; that she then became speechless, was taken home, and died before the next morning. The above witnesses stated, that the deceased complained of great heat, and loss of vision, and that she vomited, and emitted foam from the mouth.

The witnesses Abeer, Fukeer Bukhsh, and Hubboo Commedan, also deposed, (but with some variation in their different statements,) that, at the house of Fukeer Bukhsh, the prisoner entreated them to say that the deceased had been bitten by a snake, and promised to sell a cow, and give them five or ten rupees. Kadir, who is a *konree*, or hunter, using poisoned arrows, deposed, that he was called upon to administer an antidote to the deceased who had been poisoned, and that he attempted to give it in water, but that she could not swallow. He further deposed, that the deceased died in the manner of persons poisoned, but did not pretend that he had before seen any human being die from such cause. He also stated, that it was usual for men of his profession to bite, but not to swallow the poison, for the purpose of ascertaining whether or not it is good. The last witness having been shown some poison brought from the bazar, he stated, that it was of the kind used by the *konrees*, and of a good quality; and a portion of this being given to a dog and a goat, under the inspection of the acting native doctor Ramzan Ullee, whose evidence was taken, it soon produced the most violent effects, similar to those described by the witnesses, viz. vomiting, and the emission of froth from the mouth, with a general paralysis of limbs. All the dogs, however, which ate of it recovered after remaining in the above state for a considerable time; but the goat died in the course of about an hour. On the day on which Ghurbaree died, the police Darogha repaired to the spot, and held an inquest on the body, in the presence of Janoo, Khyr Mohummud, Jan Mohummud, and Hubboo. The prisoner, at the Thana, afterwards confessed having given the deceased, in a dish of *kuddoo*, a ball of poison, which she had secreted from the house of her brother Koosyie Konree, who was also a hunter using poisoned arrows. She at the same time stated, that she gave it in a joke, not thinking that it would kill the deceased, as she had seen her brother and others eat the same kind of poison with impunity. This confession was proved by Janoo, Khyr Mohummud, Hubboo, and Fukeer Bukhsh. It appeared, that at the time of the accusation of the prisoner by Ghurbaree, Fukeer Bukhsh struck the prisoner several times with a shoe.

1824.

MUSST. KALTEE'S case.

The subsequent confession before the police Darogha, however, seemed to have been voluntary; but next day the prisoner retracted it, and stated on oath, that one Rufeek had stolen and eaten her husband's cow, and that he had poisoned the deceased to prevent her making a complaint. She was not able to adduce any proof of this accusation, nor of the theft; the general opinion of the neighbours being that the cow had been destroyed by a tiger. The prisoner, on her trial, pleaded not guilty, and stated, that she had been beaten by Fukeer Bukhsh, and taught to confess. To prove this, she called no witnesses, except those for the prosecution, who confirmed her statements, that Fukeer Bukhsh struck her with a shoe after she was accused by the deceased, and that he told her, if she had done the deed, to give notice at the Thana, and not to ruin the village.

The Judge of Circuit observed that, with reference to the evidence of Hazaree, confirmed as it was by the modified confession of the prisoner before the Darogha, the dying declaration of the deceased, the conduct of the prisoner when she was accused by the latter, and a comparison of the symptoms produced by administering the poison, as described in the deposition of Ramzan Ullee, with those which were declared by the witnesses to have preceded the death of Ghurbaree, in his opinion, there was the strongest presumptive proof, that the latter died of poison administered by the prisoner, whom he therefore considered to be convicted of wilful murder, and to be a fit object for capital punishment, both with reference to the enormity of the offence itself, and to the strong reason there was to believe, that, however rarely this crime might be reported to the police officers, it was one of not very uncommon occurrence.

By the Court of Nizamut Adawlut, present C. Smith, (second Judge.) "The confession, corroborated by the evidence of the boy Hazaree, and of those who depose to the last words of the deceased, and to the prisoner's having offered money to induce them to say the deceased died from the bite of a snake, seems to me to be sufficient for the prisoner's conviction; and for the reasons stated by the Commissioner, I am of opinion, that the sentence should be capital. The motive to the act must have been some of those innumerable and endless jealousies which are apt to arise between women who are wives of the same husband."

The third Judge (J. Shakespear) fully concurring in this opinion, the prisoner was sentenced to be hanged accordingly.

1824.
Dec. 20th.
RAMCHURN GURAUN'S case.

SUKHEE GURAUN.
against
RAMCHURN GURAUN,

Charge—MURDER.

The corpse of the prisoner's wife having been found with marks of strangulation and other violence, the prisoner stated that she had hung herself. On her disappearance, he stated, that she had run away; but the circumstantial evidence not being sufficient to bring home the charge of murder to the prisoner, he was released by order of the Nizamut Adawlut.

THE prisoner above named was charged with the murder of his wife Mussummaut Soodun, the daughter of the prosecutor, and tried for that offence at the 1st sessions of 1824, for zillah Beerbhoom.

The circumstances of this case were as follow. The deceased had been in the habit of leaving her husband's house, (probably on account of fear of allowing him to cohabit with her, in consequence of her extreme youth, she being only 14 years of age,) and retiring to that of her father and mother, which was at the distance of about half a mile. This circumstance, it appeared, created discontent and ill-will towards her on the part of her husband and his father, who lived in the house with him, and had frequently to go in search of her. The father Sumbhoo Guraun, was also committed to take his trial in this case, but died in jail before the case came on. The body of the deceased was found on the bank of a pond, at a short distance from the prisoner's house, with the mark of a cord having been fastened round her neck, and with other marks of violence. The prisoner stated in his defence, that the woman hung herself in his house, and that himself and his father, from fear of being brought into difficulty, concealed the circumstance, and removed the body to the place where it was found on the following day. He had previously, when first apprehended, stated, that his wife had eloped from his house, and that he did not know what had become of her.

The law officer of the Court of Circuit declared in his *futwa*, that the prisoner was convicted on strong suspicion of the murder of his wife, and was liable to suffer punishment by *Acoobut*.

In referring the case, the Judge of Circuit observed, that the suspicion against the prisoner was certainly great; but as it was possible, that he might not have been guilty of the crime of murder, and that the deceased might, perhaps, from vexation at having been beaten and ill treated, have destroyed herself, he did not think it amounted to that degree of violent presumption which could authorize conviction. He therefore disagreed with the *futwa*, and forwarded the case for the decision of the Superior Court

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner of the charge of having murdered his wife, declared him entitled to his release.

By the Court. C. Smith, (second Judge.) "They concealed the circumstance of the wife's death, and threw her body out on the plain; and the prisoner, after her death, pretended that she had run away. There were other marks of violence on the body, besides those of the hanging. The deceased had occasioned the prisoner and his father great trouble and inconvenience, by frequently leaving her husband's house; nor is it likely that in the house of her husband

and his father, she should have found an opportunity for committing suicide, as from her habit of running away, it is probable she was well watched; nor was her age such as makes suicide probable. I am of opinion, therefore, that there is a strong presumption of the prisoner's having wilfully murdered her; and though I would not sentence him to death, I would sentence him to perpetual imprisonment with labour in the Allipore jail."

1824. RAMCHURN GURAUN'S case.

J. Shakespear, (third Judge.) "I am disposed to concur with the *futwa* of our law officers, and to acquit. The girl may have hanged herself, or she may have been hanged by the father and elder brother, or by the prisoner; but the evidence is not to my mind sufficient to determine how she met with her death. The husband is stated to have been attached to the girl, and the father and elder brother to have threatened her life before. The other marks on the body besides those of hanging, would appear, from the evidence, to have been made after death. I do not therefore concur in the conviction and sentence proposed to be passed on the prisoner."

The fifth Judge (W. B. Martin) concurring in the above opinion, a sentence of acquittal was issued accordingly.

APURTEE DASEE, *against* MUSST. SOUREE.

Charge—MURDER.

1824. Dec. 24th. MUSST. SOUREE'S case.

THE prisoner was tried at the second sessions of 1824, for zillah Cuttack.

THE *futwa* of the law officer of the Commissioner's Court convicted the prisoner of the wilful murder of Musst. Soomitrah, daughter of Bhekaree Doss, for the sake of her ornaments, and declared her liable to suffer death by *Kissas*. The proof consisted in her own confession, corroborated by her producing the ornaments, and the bloody knife, the motive and the instrument of the murder.

The acting Commissioner concurred in this *futwa*; and in the absence of any circumstances to warrant his recommending that mercy should be extended to her, he declared his opinion, that the prisoner should be sentenced to suffer death.

The Court of Nizamut Adawlut (present C. Smith) having duly weighed the proceedings held upon the trial and commitment of the prisoner, passed the following orders. The Court observing, that the acting Commissioner of Cuttack, did not cause the confession of the prisoner, which forms a material part of the evidence, to be read over and explained to the prisoner, or put any question to her, as to her having made, or not made such confession, direct that, at the next sessions for zillah Cuttack, the prisoner be again brought before the acting Commissioner for the

In the case of a confessing prisoner, it is requisite that the confession should be read and explained to the prisoner at the time of taking the answer "guilty or not guilty," and that the prisoner be then questioned, as to its authenticity or otherwise. It

1824.
MUSST. SOUREE'S case.

purpose of supplying the defect above noticed. The acting Commissioner will also direct the re-attendance before his Court of the subscribing witnesses to the confession; and should the prisoner deny the confession, or allege that she did not make it freely and voluntarily, that he will cause the confession to be read over and explained to those witnesses, (which he omitted to do on the first trial,) and their reply to be recorded as to its having been the free and voluntary confession of the prisoner. The prisoner will of course be at liberty to put any question she may think fit to the witnesses; and the acting Commissioner, previous to closing his proceedings, will again ask the prisoner whether she has any thing further to urge in her defence, and record whatever she may say in answer.

should also be read and explained to the subscribing witnesses.

In reply to these orders, the acting Commissioner observed, that upon the occasion of holding a former sessions, he took the opportunity, in referring the trial of Sheer Mahomed and others, charged with murder, on the 29th of March 1822, of submitting an opinion, that the practice of intermediately examining prisoners with respect to confessions made by them, was not contemplated by either section 47, Regulation IX. of 1793, or the circular orders of the Nizamut Adawlut founded upon it; and that it moreover occasioned an appearance of anomaly in the proceedings, from the circumstance of prisoners, who, in the first instance, entered a plea of not guilty, subsequently acknowledging having confessed the crime with which they stood charged, of their own free will, and thus admitting their guilt; that the two Judges holding the sittings of the Court upon that trial, appeared to agree with him, and recorded an opinion, that the practice ought to be discontinued; that under these directions he had acted in the case under notice, and in all the others which came before him during the sessions that had been lately concluded, in which confessions of prisoners formed a part of the evidence against them, and consequently, if he had erred in one, he had erred in all of the nature alluded to; that the opinion recorded in the trial above adverted to, might probably have been unknown to the Judge of the Court before whom the proceedings in the case under notice were held; and as he still continued in the sentiments before expressed by him, and conceived that he was borne out in them by the practice of English criminal courts, he requested that the point might be submitted for the opinion of the full Court, and that he might be favoured with a communication of it for his guidance, in the event of his having to hold the sessions at any future period. That with regard to the omission noticed in the third paragraph of the extract from the proceedings of the Nizamut Adawlut, viz. his not having caused the prisoner's confession to be read and explained to the subscribing witnesses, he was not aware of the necessity of so doing, except in cases in which the witnesses might state, that they did not recollect the whole of the particulars of the confession which they had attested as witnesses; that in the present case, the witnesses did not omit in their depositions any point of importance, contained in the prisoner's statement; that he conceived it to be a perfectly satisfactory establishment of that

confession, and that, on the points of its being perfectly voluntary, of their having been in attendance throughout its being taken down, and to their signatures as subscribing witnesses, those persons were all particularly examined.

The points submitted by the officiating Commissioner having accordingly been taken into consideration by a full Court, agreeably to his request, the following reply was returned to his reference. "The Court cannot discover any contradiction between the orders above alluded to, and those quoted, as issued by two former Judges, in the year 1822, in the case of Sheer Mahomed and others. On that occasion, the instructions of the Court had reference to the practice of examining prisoners, respecting their confession, immediately after taking their answer of guilty, or not guilty; instead of postponing such examination till the defence of the prisoner is taken after the evidence for the prosecution, as prescribed in section 47, Regulation IX. 1793; whereas, the recent orders of the second Judge went to supply an obvious omission in the proceedings, by directing that the confession of the prisoner should be read over and explained to her, and that she should be questioned as to the fact of its being authentic or otherwise. The objection entertained by the second Judge against the proceeding was on the score of the prisoner's confession not having been read over and explained to her at all, and of her not having been questioned at all as to its correctness; to which points the orders of 1822 had no immediate reference. With respect to that part of the order of the second Judge which directed, that the same precautions should be observed, when taking the evidence of attesting witnesses, the former orders cited are entirely silent, and the Court deem it sufficient to observe, that they entirely concur in the propriety of the instructions issued on that point."

The omissions noticed having been supplied, and the case having been resubmitted for the final orders of the Nizamut Adawlut, and the prisoner having been declared guilty of wilful murder by the *futwa* of the law officers, she was sentenced by the Court (present C. Smith and H. Shakespear, officiating Judge) to suffer death.

1825.
Jan. 8th.
ANDAROO'S case.

BAROO MOMIN,
against
ANDAROO.

Charge—FORGERY.

Prisoner convicted of having personated a Dewanny Chupprassy, and of having, with others, arrested the prosecutor by means of a forged summons. Sentenced, under the provisions of section 9, Regulation XVII. 1817, to imprisonment for three years.

THIS case was tried at the 2d sessions of 1824, for zillah Rungpore.

The prisoner was charged with having, in company with another prisoner named Rajuk Mahomed, who died between commitment and trial, personated a Chupprassy of the civil Court, and served a forged summons on the prosecutor.

The prosecutor deposed, in the month of Phagoon, 1229, B. S. Rajuk Mahomed having made a claim against him for a sum of money, came to him one day with the prisoner Andaroo, who called himself a Dewanny Chupprassy, and served on him a forged summons, and arrested him: that the prisoner then took him to the house of Rajuk Mahomed, and after detaining him some time, allowed him to seek security for his appearance: that he sent for Muduk Sircar, who having come to him, asked the prisoner to shew him the summons, and on seeing it, discovered that it was a forgery: that he then went with the prosecutor and prisoner to the house of Kunye Sircar, and shewed him the summons: that Kunye Sircar seeing that it was a forgery, told the prosecutor and Muduk Sircar to take the prisoner Andaroo to the Thana; that as they were taking him there, he fled, but was, with Rajuk Mahomed, subsequently apprehended and sent in to the Magistrate.

Muduk Sircar and Kunye Sircar, being examined on oath, attested the truth of the prosecutor's statement. The prisoner pleaded "not guilty:" he however acknowledged having been in company with Rajuk Mahomed, when he and another person, who called himself a Chupprassy, served a summons on the prosecutor, and arrested him: he said he was unable to read, so that he could not say whether the summons was forged or not.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner, on violent presumption, of having personated a Dewanny Chupprassy, and of having served a forged summons on the prosecutor; and declared him liable to imprisonment by *Tazeer*, at the discretion of the ruling power. The Judge of Circuit concurred in this finding; but as the prisoner had already been confined nearly ten months, he considered him deserving only of a further period of imprisonment for two months, and sentenced him accordingly.

The Court of Nizamut Adawlut, (present C. Smith and C. T. Sealy) on perusing the explanation given of this case in the statement of prisoners punished without reference to the Court, considered the case to be one of forgery; in which, under the provisions of section 9, Regulation XVII. 1817, the Judge of Circuit was not authorized to pass a less severe sentence than imprisonment for three years, and that he should have referred the trial to the Nizamut Adawlut, if he considered that sentence too severe. The proceedings

held on the commitment and trial were therefore called for, and referred to the law officers of the Court. Their *futwa* fully convicted the prisoner of having, in company with Rajuk Mahomed, and another person, who called himself a Dewanny Chupprassy, arrested the prosecutor by means of a forged summons, and declared him liable to descretionary punishment by *Tazeer*. The Court, concurring in this finding, sentenced the prisoner to be imprisoned with hard labour for two years and ten months, in addition to the imprisonment of two months, to which he had been sentenced by the Judge of Circuit.

1825.
ANDAROO'S case.

ABOOL HUSSEIN, *against* RUBBEEOOLLAH.

1825.
Jan. 15th.
RUBBEEOOLLAH'S case.

Charge—MURDER.

Case of a prisoner, murdering his own daughter from revenge against his son-in-law. Sentence, death.

THIS trial came on at the second sessions of 1824, for zillah Backergunge. The circumstances of the case were thus detailed by the Judge of Circuit, in his letter of reference accompanying the trial.

"On yesterday's date, I submitted the case of an unfortunate individual convicted of murder, whom I strongly recommended to mercy. In the present case, however, I am painfully compelled to observe, that I am aware of no ground for preferring a similar recommendation. The circumstances, though less horrific, are yet appalling. The child of the prisoner fled to him for protection; and I grieve to add, that her innocence and her purity from offence, so far from shielding her from his merciless grasp, his spirit of revenge towards her husband, unsatiated by his accomplishment of her murder by strangulation, a few hours subsequent to her disappearance, induced him on the following morning to accuse that individual of the deed; yet if mercy can be extended, his expectation will not be vain. The parties resided at Mouza Chuta Sooleh, Pergunnah Syyudpoor, where the murder was committed on the night of the 15th of Bhadoon 1231 B. S. corresponding with Sunday, the 29th of August 1824. The prosecutor was married about five years ago, to Musst. Poorneema, then a child of five years of age. The marriage appears to have been productive of much unhappiness to the families, and to have excited, rather than allayed or removed, differences and disputes which ultimately led to the fatal catastrophe. The premises and lands of the prosecutor and the prisoner lying contiguous, a violent personal altercation occurred on the Saturday, (the day preceding,) relative to the injury the prosecutor declared he sustained by the prisoner driving his cattle to pasture by a road or pathway leading by his crops, and they separated in anger; and on the occasion of the repetition of hostility, Musst. Poorneema fled that night, and remaining concealed during the day in a plantation of sugarcane,

1825.

RUBBEE-OOLLAH'S case.

sought in the evening the protection of her parents. The prosecutor, inferring that she had directly fled to them, and not daring to proceed to demand her, adopted the base and vindictive measure of laying information at the adjacent police office, of the dependent of the prisoner, named Ahmed Ali, having that night entered his (the prisoner's) premises for the purpose of criminal intercourse or theft, and the parties were accordingly summoned, but immediately released. Though indignant at the course that had been pursued, and returning in a temper heated by natural irascibility, it is yet not declared or known, that the prisoner evinced any disposition to disturb his child, by invective or by personal injury, and she retired to rest, sleeping in the same apartment with her mother Musst. Sumputtee, and her sister Soobnee, with two or three children: but unable, as he admits in his confessions to the police *Mohurrir*, and subsequently to the Magistrate, to bear the contumely and wrongs of the prosecutor, he sought her at midnight, and strangled her with his hands, a deed he had scarcely committed, before Mussummaut Sumputtee and Soobnee were alarmed by her groans, when they discovered him standing by her side; and being compelled to silence by his threats, he removed the body to an adjoining jungle, and returning, wept bitterly; but in the severity of his heart towards her husband, he proceeded on the following morning to the police office, and accused him of the murder. The prosecutor strongly pleading his innocence, and suspicion attaching to the prisoner, he ultimately confessed having committed it, and pointing out the spot where he had concealed the body, it was found, and removed. The evidence of Musst. Sumputtee and Soobnee is conclusive, and is more than in part corroborated by the testimony of the son Ameeroodeen, who has related, that he was informed by them on the following morning, of the murder of his sister by her father. The testimony of the remaining witnesses is grounded on oral communications. The prisoner, on his trial, has pleaded his innocence. Regarding the evidence of Musst. Sumputtee and Soobnee, as I before remarked, conclusive of the guilt of the prisoner, and that judgment being further supported by the facts of the case, I disagree so far with the *futwa* of the law officer, that whilst it pronounces him convicted of the crime, on violent presumption only, I consider him to be convicted on full legal proof."

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of his own daughter, declared *Kissas* to be barred by his having been the father of the murdered person, and *Deeut* to be incurred.

In a second *futwa* it was declared, that but for the circumstance of the prisoner's having been her father, he would have been liable to suffer death by *Kissas*.

The Court of Nizamut Adawlut, (present C. Smith and C. T. Sealy,) concurring with the Judge of Circuit, as to the sufficiency of the proof of the prisoner's having been guilty of a foul murder, and of his having murdered his own daughter from a spirit of revenge against his son-in-law, saw no reason why he should not be sentenced to suffer death. The prisoner was ordered for execution accordingly.

1825.
Jan. 25th.
BULJEET SINGH'S case.

GOVERNMENT, against BULJEET SINGH.

Charge—ATTEMPT TO MURDER.

A sepoy on guard convicted of an attempt to assassinate (more correctly a Magistrate) in the exercise of his duty, by presenting a musquet at his body, and, on its missing fire, endeavouring to draw his sword for the same purpose: sentenced to imprisonment for life in the Allipore jail.

THE prisoner in this case was charged, in the calendar, with an attempt to assassinate the acting Magistrate of Moradabad, when in the public Cutcherry, in the performance of his duty, by presenting a musquet at his body, and endeavouring to draw his sword for the completion of his purpose, on its missing fire. The prisoner confessed distinctly his intention to put to death the officiating Magistrate, and that gentleman's deposition was sufficient to bring the fact charged, home to the prisoner, being corroborated by those of other witnesses. The deposition was in the following terms. "I was officiating Magistrate of the district of Moradabad, on the 11th of March, 1824. I know the prisoner. On that day I was sitting in the public Cutcherry, between the hours of 12 and 3 P. M. when the prisoner Buljeet Singh suddenly appeared at the door of the room with his musquet, and the bayonet fixed: his piece was ported: I conceived he had some affront to complain of, and was preparing to listen to him. He advanced within a few steps, perhaps three, of the table at which I was sitting, halted, presented his piece at my body, and pulled the trigger. Upon the musquet's missing fire, I jumped down from the platform on which the table is placed, and seized the musquet and his right arm, which he raised to a sword under his left arm. At, or about this instant, Keamoodeen, a private servant of my own, who was standing behind my chair, laid hold of him, when he was seized and secured by the other people in the room. The musquet was unloaded of a ball cartridge, and the prisoner confessed, that his intention was to assassinate me. The prisoner had been standing sentry, and had left his post. On being secured, he was greatly agitated, but speedily recovered, and made a coherent and intelligible confession, which is on the record."

It appeared in evidence, that, at the moment when the prisoner made the atrocious attempt as above narrated, a man of his own caste (goldsmith) was in the act of undergoing the infliction of corporal punishment. This circumstance was conjectured to have instigated the prisoner, in the absence of every other conceivable motive; but the prisoner himself denied that the circumstance in question operated on his mind, and stated, that he was actuated by some sudden and irresistible impulse, the nature of which he could not describe. In referring the case, the Judge of Circuit observed, that he saw no reason to suppose the prisoner insane; that he appeared to have acted wholly without an intelligible motive; but that his determination to effect his design, exhibiting a deliberate purpose, was proved by his being provided with, and his effort to use, his sword. He recommended that sentence of transportation for life beyond seas should be passed upon him. Offences of the present description,

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BULJEET SINGH'S case.

he added, seemed to have been always treated lightly by the superior tribunals, and such offences were undoubtedly becoming of less unfrequent occurrence.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of an attempt to assassinate the acting Magistrate of Moradabad, declared him liable to *Acoobut* for the crime.

By the Court. C. Smith, (officiating Chief Judge.) "Though the prisoner does not confess his motive, yet there is strong reason to believe he acted under the impulse of his feelings, excited by the punishment which he was inflicting upon a person of his own caste: and the case, similar to that of Pultun Singh, sentenced by this Court in 1809, to five years imprisonment, that I cannot agree with the Circuit Judge in thinking the prisoner in this case should be transported for life. Five years may be too light; and if another Judge concur, he may be sentenced to imprisonment with labour in banishment for eight years."

W. B. Martin, (fifth Judge.) "I do not concur in the sentence proposed by the officiating Chief Judge. There appears to me to be an essential difference between the case alluded to in the opinion of the officiating Chief Judge and that which is now before the Court. In the former, the ground of the light punishment awarded was expressly declared to be a presumption, that the attempt of the prisoner against the life of Mr. Ahmuty was not premeditated. In the present case, there is every circumstance from which deliberation can be inferred: the prisoner's loading of the musquet for the accomplishment of the object which he had in view is distinctly admitted by himself in his confession before the Magistrate, as well as the intention which he had conceived of taking the life of the acting Magistrate. I am therefore of opinion, that the prisoner should be sentenced to imprisonment for life in the jail at Allipore."

C. T. Sealy, (third Judge.) "The prisoner in this case was not related to the individual punished, but he was a servant of the Government, and at the moment he attempted the life of the acting Magistrate, was sentry at the Cutcherry door. As such, it was his duty to have defended with his firelock the person and life of the acting Magistrate, from any attack that might be made, instead of employing his arms to destroy. It appears to me to be an aggravated case. I therefore concur in Mr. Martin's sentence."

A sentence of perpetual imprisonment was passed accordingly.

BUKHUT SINGH,
against
BUSSAWUN, *alias* BHUWANI DEEN.

1825.
Jan. 26th.
BUSSAWUN *alias* BHUWANI DEEN'S case.

Charge—ADMINISTERING A DELETERIOUS DRUG, with INTENT TO ROB.

The prisoner being convicted of administering a deleterious drug to the prosecutor, with intent to render him insensible, and to rob him of his property: sentenced to imprisonment for eight years, though the robbery was not completed.

THE prisoner was charged with having administered to the prosecutor some intoxicating or poisonous drug, in order to deprive him of his senses, and to rob him of his property. The trial came on at the 2d sessions of 1824, for zillah Allahabad.

The prosecutor deposed, that he was a Rajpoot, an inhabitant of the territory of the king of Oude, and was journeying from his village to Benares, to see his brother; that on the 21st of August, 1824, as he was washing at a well, he fell in with the prisoner and another person, whose name he did not know: that the prisoner entered into conversation with him, and told him that his name was Bhuwani Deen, and that he was of the Brahminical order, and hearing from him (the prosecutor) that he was going to Benares, proposed that they should all three travel in company; that on his assenting to this, they continued their journey till they arrived near the village of Burrunpoor, when it was proposed that they should stop, and take some food: that each took out his store of parched grain, and they commenced their meal; that he having expressed a wish for some sugar, the prisoner took some, and mixed it with water, and gave it to him, and he, mixing it with his food, ate it; that after some time, feeling himself giddy and uncomfortable, and suspecting that he had taken some poisonous substance, he got up, and went to the door of Ulpee Koormee, an inhabitant of Burrunpoor, and told him that the prisoner had given him poison, and demanded protection; that he knew not what took place after this, as he became senseless, and did not fully recover his senses till the next day, when he found himself at the Thana. He said that he had no previous acquaintance with the prisoner and his companion, and that he had about 39 rupees in cash, tied up in his *dhotee*, which the prisoner might have seen when his clothes were wet from bathing, a sword, a brass *lotah*, and some clothes; but that he had lost nothing but a few pice. Ulpee Koormee, the person from whom the prosecutor demanded protection, Khoshal the Chowkeedar, and several of the inhabitants of Burrunpoor, deposed on oath, that on the evening of the day charged, the prosecutor came to the door of Ulpee Koormee's house, and said that the prisoner had poisoned him, and demanded protection; that he had the appearance of a person labouring under the effects of some intoxicating drug, and shortly after his arrival fell down senseless, and continued in a very bad state the whole night; and that on their conducting him to the Thana the next day he could not walk without assistance; that on hearing the accusation against the prisoner, they took him into custody; that he called himself Bhuwani Deen, a Brahmin, and wore a Brahminical thread, and said the prosecutor was his brother, and

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BUSSAWUN *alias* BHUWANI DEEN'S case.

was labouring under the effects of a fever. To this, however, they gave no credit, but carried him the next day to the Thana. They deposed that they did not see any third person with the prisoner and prosecutor.

It was proved on the trial, that the real name of the prisoner was Bussawun, and that he was a *pausee*, or vender of toddy, a low cast of Hindoo. When examined at the Thana, he called himself Bhuwani Deen, the son of Sheo Bukhsh, a Brahmin; and before the Magistrate, he first called himself Bhuwani Deen, son of Baboo Brahmin, but afterwards acknowledged that he was also called Bussawun, and that he was a *pausee*. On his trial, he pleaded "not guilty." In his Moofussil and Foujdaree examinations, however, he acknowledged that he and one Sookwa Aheer, with whom he had no previous acquaintance, fell in with the prosecutor, and journeyed with him towards Burrunpoor, and that Sookwa might have administered to the prosecutor some poisonous drug, without his (the prisoner's) knowledge. From the tenor, however, of his examination, it was evident, that he was aware that it was the intention of Sookwa to rob the prosecutor, and that he expected a share of the plunder.

The law officer of the Court of Circuit, under all the circumstances of the case, declared the prisoner convicted on violent presumption (*zuni i ghalib*,) of having administered to the prosecutor some poison, or other drug causing insensibility, with the intention of stealing his property: that the Moohummudan code contained no specific penalty for such a crime, but that *Acoobut*, or other punishment might be inflicted on the offender, at the discretion of the ruling power. The Judge of Circuit, in his letter of reference, concurring with the *futwa*, recommended that the prisoner should undergo the same degree of punishment to which he would have been subject, had he succeeded in robbing the prosecutor. He did not regard the failure of the prisoner's purpose, as in any degree lessening his guilt, as he had done all in his power to effect his purpose, which was only defeated by the timely application of the prosecutor to the villagers of Burrunpoor, on discovering the quality of what had been administered to him by the prisoner, and the immediate apprehension of the latter.

The law officers of the Nizamut Adawlut concurred with the *futwa* of the law officer of the Court of Circuit in convicting the prisoner, and declared him liable to discretionary punishment by *Acoobut*; and the Court, (present C. Smith,) under all the circumstances of the case, sentenced the prisoner to be imprisoned and kept to hard labour for the term of eight years.

1825.

Feb. 3d. Case of JUMAL ALI and RAMDIAL.

GOVERNMENT, *against* JUMAL ALI and RAMDIAL.

Charge—PERJURY, and SUBORNATION OF PERJURY.

Held that a debtor's producing a witness, who deposed falsely as to his having witnessed a payment to his creditor, forms sufficient presumptive evidence against the debtor to convict him of subornation of perjury.

THE prisoners Jumal Ali and Ramdial were tried at the second sessions of 1824, for zillah Allahabad, the former charged with perjury, and the latter with subornation of that offence. The circumstances of this case were briefly as follow.

On the 31st of March 1824, the prisoner Jumal Ali swore, in the Moonsiff's court of Allahabad, to having witnessed the payment of a sum of money on the 8th of January 1821; on which date, and many months before and after it, he was a prisoner in the jail, under a sentence for theft, which rendered it physically impossible that he could have witnessed the transaction.

The proceedings in the case were submitted to the Nizamut Adawlut, in consequence of the Circuit Judge's non-concurrence with the *futwa* of his law officer, which acquitted Ramdial, whom the Judge regarded as the principal offender of the two prisoners. The guilt of Jumal Ali, he observed, was confined simply to the false evidence furnished by him; that of Ramdial extended to his own deposition, the subornation of the other's perjury, and the attempt to defraud Nundlal, his creditor, of the amount of the money borrowed from him, by the false testimony of this witness. As to there not being sufficient to his conviction in the present trial, it was, he added, quite impossible to exclude him from a participation in what he alone was to reap the benefit of, with the name too of the person convicted of perjury in his favour, furnished by himself as a witness to the payment which it was his object to substantiate. He thought that both the prisoners should be *tushkeerd*, and imprisoned with labour and in irons, Ramdial for four, and Jumal Ali for six years (with reference to his former convictions) from that date.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Jumal Ali of perjury, and acquitting the prisoner Ramdial of subornation, declared the former to be liable to *Tazeer*, and the latter to be entitled to his release.

The Court, (present C. Smith and C. T. Sealy,) concurring in the *futwa* regarding Jumal Ali, and deeming the prisoner Ramdial guilty of subornation of perjury, sentenced the prisoners Jumal Ali and Ramdial to be imprisoned with labour for the term of three years.

1825.
Feb. 21st.
Case of DEEN ALI SHAH and others.

ANUND CHUNDER CHATOORJEA,
against
DEEN ALI SHAH and six others.

Charge—ASSAULT and WOUNDING.

The *futwa* of the law officer of a Court of Circuit having declared certain prisoners (convicts imprisoned for life) tried for assault and wounding, liable to *Tazeer* as well as *Hookoomut-i-udl*: held that the 6th section of Regulation IV. 1822, does not preclude the Judge of Circuit from awarding corporal punishment under clause 7, section 2, Regulation LIII. 1803.

THE prisoners Deen Ali Shah, Kulloo, Ghamundy, Ramphul, Dhowul, Nunnoo, and Seetul, were charged with violently and maliciously assaulting the prosecutor, and cutting off his nose.

The prisoners were convicts, confined in the Allipore jail, under sentence of perpetual imprisonment. The prosecutor was a Bukshee attached to the jail, and employed in the distribution of the convicts' daily allowance of *couries*. From the statement of the prosecutor, and the evidence of the witnesses for the prosecution, it appeared, that on the 16th of May 1824, the prisoners fell upon the prosecutor in the jail, and threw him on the ground, when the prisoner Deen Ali seated himself on his breast, and with a razor cut off about a third of his nose. This act of cruelty appeared to have originated in a suspicion of the prosecutor's having been the cause of the punishment of a *duffadar* in the jail, who was a countryman of the prisoners.

The witnesses for the prosecution being all convicts, the *futwa* given by the Circuit law officer on the trial recited, that although they were not altogether competent witnesses, yet that the prisoners were liable to *Tazeer* on violent presumption; and in answer to further questions from the Court, declared, that had they been convicted on full legal proof, the prisoner Deen Ali would have been liable to a sentence of *Hookoomut-i-udl*, and for the sake of public example to *Tazeer* also, and the rest of the prisoners to *Tazeer*. The prisoners being convicts for life, and entertaining doubts whether the rule laid down in section 6, Regulation IV. of 1822, might not be construed to prohibit the infliction of corporal punishment in cases similar to the present, the Judge of Circuit referred the trial for the orders of the superior Court, expressing at the same time his concurrence in the *futwa* given by the law officer of his Court.

The Court of Nizamut Adawlut (present C. Smith and C. T. Sealy) observed, that, in this case, the first *futwa* of the law officer of the Court of Circuit having declared the prisoners liable to *Tazeer*, it was competent to the Judge of Circuit to award suitable corporal punishment, under clause 7, section 2, Regulation LIII. 1803; and under this view of the case, ordered that the proceedings on the commitment and trial should be returned for the Judge of Circuit to pass his own sentence.

1825.
Feb. 21st.
RAMSOONDUR BHAGUL'S case.

GOVERNMENT,
against
RAMSOONDUR BHAGUL.

Charge—SUBORNATION OF PERJURY.

The prisoner having produced a person in a court of justice to give evidence under a fictitious name, was convicted of subornation of perjury, though the perjury was not completed. Sentence, imprisonment with hard labour for two years.

THIS trial came on at the second sessions of 1824, for zillah Backergunge.

The circumstances which gave rise to this trial were, that the prisoner Ramsoondur Bhagul preferred a complaint in the criminal court, against one Teeloke Chund, on the charge of dispossessing him from the lands which he desired to bring into cultivation, and seizing four head of cattle. The case was referred, under the provisions of Regulation III. 1821, to the Pundit for investigation. He (Ramsoondur) gave in the names of two witnesses, Sobha Ram and Rugoonath, in support of his charge; and having procured a subpœna, accompanied Dullubh Singh, the *peada*, who was deputed by the Nazir to serve the subpœna, into the Moofussil, to point out his witnesses. He then pointed out Prankishen, as Sobha Ram, and returned with him and Rugoonath to the station. The case having come on before the Pundit, Prankishen was brought forward to be examined, and the Pundit asked him his name. Before he answered, Ramsoondur Bhagul said, that the name of the witness was Sobha Ram. On the Pundit's desiring him to let the witness answer for himself, the latter said his name was Prankishen, *alias* Sobha Ram. Omachurn Bose, Gomashta of Raja Nursing Narain Rai, then informed the Pundit that the name of the witness was not Sobha Ram. On being questioned by the Pundit, the witness acknowledged that his real name was Prankishen, and that Ramsoondur had tutored him to personate Sobha Ram. On this the Pundit reported the case to the acting Magistrate, by whom Ramsoondur Bhagul was committed for trial before the Court of Circuit, on a charge of subornation of perjury, and Prankishen on a charge of perjury. Ramsoondur Bhagul denied the charge of subornation of perjury, both before the acting Magistrate and on his trial. He declared, that the witness whom he subpœnaed was named Sobha Ram as well as Prankishen; that he had always known him by both names, and that the adverse party had instigated the witness to deny his name, and accuse him of subornation of perjury. Prankishen acknowledged that his name was not Sobha Ram, and that Ramsoondur had tutored him to represent that person. It was clearly established by the evidence of the persons who were present in the Pundit's court, and of the *peada* (Dullubh Singh) that Ramsoondur produced Prankishen to personate Sobha Ram, and that the latter at first said that he was called Prankishen, *alias* Sobha Ram; but on being charged with the falsehood, acknowledged that his name was not Sobha Ram, but that Ramsoondur had tutored him to personate that individual. It was also proved by several witnesses for the prosecution, who resided in the same village with Prankishen, and who had known him for upwards of twelve years, that he had never borne any

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RAMSOONDUR BHAGUL'S CASE.

other name than Prankishen. Their evidence was corroborated by two witnesses, called by the prisoner Ramsoondur to prove that the name of the said witness was really Sobha Ram. The very confession of Prankishen refuting the charge of perjury, he was immediately acquitted; but the law officer of the Court of Circuit argued, that, Prankishen standing acquitted, the conviction of the suborner Ramsoondur Bhagul could not ensue, because perjury (the aim and the end of subornation) was not actually committed. The Judge differed from this opinion, and submitted his reasons for so doing in the following terms.

"With every respect for the talents and the erudition of my colleague, the law officer, I cannot but observe, that subornation, in its present and real sense, being the procuration of any person or persons to give false evidence upon oath, it cannot much exceed the limit of bringing up an evidence to personate another, and prompting him at the tribunal of justice to swear his name, and to represent himself to be the witness recorded and designed. The act, therefore, was complete; and that perjury was not committed, was not owing to the want of endeavour and inclination on the part of the prosecutor, but to the alarm of the witness himself, at the discovery of his real name and person. The subornation being fully and substantially proved, in the instances of the prisoner Ramsoondur recording Sobha Ram as his witness, of his accompanying the *peada* to his own house, where Prankishen resided, and pointing him out on the road to be the witness Sobha Ram, returning with Prankishen under that feigned and assumed name, and bringing him before the Court of the Punditas that person, then and therein prompting Prankishen, at the moment of his hesitation, to declare his name, and represent himself to be Sobha Ram, I consider him liable to suffer the mitigated punishment prescribed in clause 2, section 9, Regulation XVII. of 1817."

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Ramsoondur Bhagul, of having caused a witness to attend under a name which did not belong to him, and concealed the witness's real name, declared him liable to *Tazeer* for the offence.

The officiating Chief Judge (C. Smith) was of opinion, that as there was no perjury, and no satisfactory evidence of any attempt on the part of the unacquitted prisoner to suborn the acquitted prisoner to commit that crime, the prisoner should be discharged.

C. T. Sealy, (third Judge). "It appears to me, that the prisoner suborned Prankishen to represent Sobha Ram, and under this assumed character to give evidence in a case before the Sudder Ameen. The cheat being detected, no evidence was given; but Prankishen called himself Sobha Ram, and he did so at the instigation of the prisoner. I would therefore, under the *futwa* of the law officers of this Court, sentence him to imprisonment with labour for two years."

The fifth Judge (W. B. Martin) concurring with the third Judge, in thinking that the crime of subornation of perjury had been satisfactorily established against the prisoner, he was sentenced, as proposed, to suffer two years imprisonment.

RAM MUNEE CHUNG, *against* RADHAKAUNT CHUNG.

Charge—MURDER.

1825.
Feb. 28th.
RADHAKAUNT CHUNG'S case.

A prisoner standing mute, was convicted of wilful murder; but *Kissas* was declared barred by a slight suspicion of mental derangement, and *Deeut* incurred. The Nizamut Adawlut, considering the prisoner mute from obstinacy, sentenced him to imprisonment for life.

THE trial of this prisoner came on originally at the second session of 1823, for zillah Backergunge. The prosecutor, Ram Munee Chung, charged the prisoner and his brother Munghlye with the murder of his father Dyaram, on the 19th Sawun, 1230, corresponding with 2d August, 1823.

The prosecutor deposed, that having been absent from his house, he returned on the 21st Sawun, and was informed that his father had gone with the prisoner and his brother Munghlye, to the house of the Zumeendar at Rycottah, to settle a dispute; that they had returned without his father, and on being asked where he was, said that he had gone to the village of Zulkhattee; that after fruitless enquiries concerning him, he (prosecutor) applied through the medium of some of the witnesses who appeared on the trial for the prosecution, to the prisoner for further information, when the prisoner, confessing that he had murdered him, was apprehended. The prisoner, when examined at the Thana, confessed, that on the night of Saturday, as he and the father of the prosecutor were returning in a boat from Rycottah, the deceased abused him, and struck him with his oar; that he in revenge formed an intention of murdering him, and watching his opportunity, struck him a blow on the back of the neck with a *dao*, which nearly severed the head from the body, and by a second blow cut off his head; that he then threw the corpse and head and the *dao*, into the river, and washing the blood from the boat, returned home. Before the Magistrate, he repeated the confession, with this variation, that Dyaram had for nearly a year maintained a criminal intercourse with his wife, and that he having, while on his return from Rycottah, asked the deceased why he meddled with his wife, the deceased struck him on the head with his oar; and that he, after remaining quiet for some time, killed him as before stated. It was to be observed, that the Magistrate had exculpated Munghlye, the brother of the prisoner, because the confession did not implicate him, and because the prisoner asserted, that previous to their arrival at Rycottah, he left the boat and went elsewhere, alleging that he was too unwell to proceed. It was not now probable that any direct proof could be obtained, the Judge of Circuit observed, against Munghlye; but he was firmly convinced, that person partook of the crime, and was equally guilty with the prisoner, for the following reasons. He proceeded with the two persons, with the intention of going to the Zemindar of Rycottah, for the purpose of settling a dispute that had long existed between himself, his brother, the prisoner, and the deceased Dyaram. It was not likely he would leave them for any purpose short of absolute necessity, till the object was

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accomplished for which they proceeded. He asserted, he left them for the purpose of going to the house of his relative Rajkishen, situated in the village of Bullooahkhandeh. Rajkishen had contradicted his statement, and asserted that it was on the 9th of Sawun, that is, ten days previous to the day stated by the prisoner; and that, when he did come, he made no plea of great illness, neither did he inform Rajkishen, that he had left his brother and Dyaram in the boat, but on the contrary declared he came from the village of Narkoolee, which was situated about two miles from the house of Rajkishen. Had his illness been real, it was not likely he would have left his brother. The deceased was represented as having been 50 years of age, but hale and strong, and not likely to have been overpowered by the single strength of the prisoner, who was by no means a stout able man. Besides, from the manner in which the murder was committed, by the head being severed from the body, and that by a *dao*, not very large, heavy, nor sharp, it was presumable that more than one person must have been concerned in the perpetration of it.

The prisoner on trial stood mute, affecting symptoms of mental derangement; but there was no evidence to prove, that previous to trial he had ever shewn the least symptom of insanity. He was sane when the confession was taken from him by the people of the village, when he deposed before the Darogha, and when he admitted his previous confessions, and corroborated them before the Magistrate. It was evident, the Judge observed, that the prisoner was mute from obstinacy, and not from any real impediment of speech or affection of mind. The evidence of the jail Darogha, his Mohurrir, and two prisoners confined in the same ward, was taken. They did not establish the unsoundness of the prisoner's mind. The *futwa* of the law officer of the Court of Circuit declared him guilty of murder, and the Judge observed, that he saw no cause to recommend any mitigation of the full penalty of the law. He at the same time sent a proceeding to the Magistrate, directing the expediency of his instituting further enquiry into the statement of Munghlye, the brother of the prisoner, and recommending that the point should be ascertained, whether or not he accompanied the prisoner and the deceased to the Cutcherry of the Zemindar of Rycottah, as he was of opinion, that, if he did accompany them, there was, coupled with what the witness Rajkishen had deposed, the strongest possible presumption that he was an accomplice with his brother in this crime.

The Court of Nizamut Adawlut, (present C. Smith, second Judge,) without taking a *futwa* from the law officers, issued the following resolution.

"The Court having read, and duly weighed the proceedings on the commitment and trial of Radhakaunt Chung; charged with murder, and the *futwa* of their law officers upon the case, pass the following orders. It appearing that the prisoner stood mute during the trial before the Court of Circuit, the Court direct, that he be again brought before the Court of Circuit at the next sessions for zillah Backergunge; that, in the interim, the Magistrate, in conformity to this

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Court's circular order of the 3d of August 1814, obtain a report from the Surgeon of the station, to be made after careful examination and inquiry, whether in his opinion, the prisoner stands mute from obstinacy, or from any real impediment of speech or affection of mind. Should the prisoner, on his again coming before the Court of Circuit, still stand mute, the Judge of Circuit will examine the Surgeon upon oath as to the circumstance and its cause, and transmit the Surgeon's deposition and report, together with his own sentiments, for this Court's consideration and final orders. 'Should the prisoner speak before the Court of Circuit, the Judge of Circuit will record any thing further which he may wish to urge in his defence against the charge on which he is tried, transmitting his answer to this Court. Ordered, that the proceedings on the commitment of the prisoner be returned to the Court of Circuit, to be re-transmitted to this Court with the further proceedings held in the case."

The prisoner, having been brought before the Court of Circuit at the jail delivery of zillah Backergunge, for the first sessions of 1814, still stood mute. There being no Surgeon at the station, the prescribed report was not furnished. The native doctor of the jail deposed, that he had observed no further symptom of derangement in the prisoner, than that he did not speak. The Darogha of the jail, three sepoys of the jail guard, and three prisoners, who were in the habits of seeing the prisoner every day, deposed to the same effect; stating, that he would not eat from the hands of a person of inferior caste, was perfectly inoffensive, and showed no symptom of insanity but an obstinate silence, which he maintained from the second day after his commitment. The presiding Judge was of opinion, that the prisoner was not insane, and that his appearance was that of idiocy, similar to that affected by religious devotees in the performance of their penances, and maintained with equal fortitude and resolution.

The law officers of the Court of Nizamut Adawlut, on perusal of the further proceedings, delivered a second *futwa*, stating, that the proceedings warranted a suspicion that the prisoner, since his confinement in the jail, had laboured under a species of mental derangement; and declared that the slightest suspicion was sufficient to bar *Kissas*, but that *Deeut* was due from the prisoner's property.

The Court, (present C. Smith and W. B. Martin,) deeming the prisoner guilty of murder, sane in mind, and mute from obstinacy and artifice, sentenced him to be imprisoned for life in the Allipore jail.

1825.
March 3d.
Case of BYDIANATH and others.

CASHINATH,
against
BYDIANATH and two others.

Charge—MURDER.

The prisoners accused of administering poison in wine to a person with whom they had a dispute. The law officers delivered a *futwa*, declaring that the charge was not proved, and that it was probable that the deceased died by excessive drinking. Prisoners acquitted.

THE prisoners Bydianath Rai and Juggunath Rai were tried at the first sessions of 1824 for Dacca Jelalpore, on the charge of administering poison in wine, given by them to the deceased Ramdoolub, which occasioned his death a few hours afterwards. The prisoner Ramjy Sein was arraigned on the charge of being accessary to the crime.

The circumstance was stated to have occurred at the Mowza Byra, on the 16th of Aghun, 1230, B. S. corresponding with Sunday, the 30th day of November 1823, and to have been induced by the existence of a dispute between the parties for the right, title to, and occupation of, the 3 anna 12 gundah share of Tuppeh Parrel; the deceased claiming the 6 anna share by virtue of a purchase made by him in the year 1228, B. S. from Musst. Gunga, the widow of the late proprietor Ramguttee and Ramsoonder Rai his adopted son, and the prisoners Bydianath and Juggunath, by virtue of their purchase of the half of the 3 anna 12 gundah share, and of their having taken the remaining part in farm, for the period of five years, from Goureeshunker Sein, Goureepershad Sein, and Mohunchunder Sein, the grandsons of the original proprietor Ramchurn, from whom it had descended through the female line. The dispute engendering an affray, in which one Sumbhoo Sein, the dependant of Ramdoolub, had been wounded, a complaint was preferred in due course to the police officer of the division. It was alleged on the part of the prosecution, that the prisoner Bydianath, being desirous of adjusting it, despatched the prisoner Ramjy Sein, with an invitation to Ramdoolub, to repair to his house; which being accepted, and being accompanied by three dependants, named Badoolee Soodr, Madoo Soodr, and Lochun Soodr (witnesses), he was received by Bydianath and Juggunath, and several of their relations and friends, and welcomed with wine, of which they all partook. The wine first brought being speedily despatched, Bydianath remarked, that he had a bottle of better wine, and directing Juggunath to produce it, he poured a small quantity into a vessel, and presented it to Ramdoolub, who on drinking it, observed, that it was very bitter, and shortly after exclaiming, that he felt his body on fire, and accusing Bydianath of poisoning him, became senseless, and expired about 3 or 4 o'clock in the morning. The witnesses Badoolee, Madoo, and Lochun, on hearing the accusation made by the deceased, and observing his state, immediately proceeded to his assistance; and their presence being, until that moment, unknown to Bydianath, he enquired who they were, and confined them in the house, until the dawn of the morning. They then effected their escape, and relating the circumstance to Hurchunder Rai, the brother of the deceased, he

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caused information to be lodged at the Thana, when Juggunath, Ramjy, and several of their relations, who had been present, were apprehended, Bydianath having absconded; but he subsequently surrendered himself to the Magistrate. Badoolee, Madoo, and Lochun distinctly deposed, that the wine last brought was not touched by the rest. The bottle with the remaining wine was never discovered. The prisoners Bydianath and Juggunath, denying the truth of the allegation, affirmed (which they supported by evidence) that Ramdoolub came to them unsolicited and uninvited, in a state of intoxication; and, demanding wine, Bydianath drank with him, but that he died from the effects of excessive intoxication; and that the whole of his family, on being informed of his state, attended him until he expired.

The law officer of the Court of Circuit acquitted the prisoners, on consideration of the exceeding improbability of their administering poison to the deceased in the presence of so many guests, and his own dependants; of those dependants remaining in the company from the hour of four in the afternoon, until an early hour in the morning; of the presumption of the deceased having proceeded to the house of the prisoners in a previous state of intoxication, and of others having then also partaken of the same wine.

The Judge of Circuit differed from his law officer, and in referring the case, observed: "These considerations (adverted to by the law officer) appear to be plausible and fair, and I am partly induced to concur in them; but, considering likewise, that the guests (those who drank with the deceased) were connected with or related to the prisoners, that they were interested in obtaining for them undisturbed possession of the estate, that the animosity of the deceased and the prisoners had long been evinced by acts of hostility, and the consequent improbability of his proceeding unsolicited to drink with them; the want of proof of his then being in a state of intoxication from previous debauch, and the immediate flight of the prisoner Bydianath, I am unwilling to confirm the acquittal." In refutation of the remark of the law officer relative to the presence of the witnesses Badoolee, Madoo, and Lochun, during so long a period, he observed, "that their presence, if the circumstance of the poison be true, was occasioned by forcible detention or restraint, as soon as the deceased became senseless."

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoners Bydianath, Juggunath, and Ramjy of the charge, declared them entitled to their release.

The Court, (present C. Smith and H. Shakespear,) concurring in the *futwa*, directed their immediate release.

1825.
March 8th.
Case of BHOLANATH GHOSE and others.

RAMGOPAL SIRCAR and SHEIKH BUKHTEAR, *against* BHOLANATH GHOSE and ten others.

Charge—AFFRAY, ATTENDED WITH HOMICIDE and WOUNDING.

A conviction of affray attended with homicide and wounding. Prisoners 3 and 4, who inflicted wounds, and were most active in the affray, sentenced to imprisonment for ten years: 1 and 2, as instigators and leaders in the affray, to imprisonment for seven years: and the remaining prisoners, who were engaged in the affray, to imprisonment for five years with labour.

THIS case came on at the 2d sessions of 1824, for zillah Dacca Jelalpore.

The prisoners Bholanath Ghose, Rampershad Sircar, Azeem Sirdar, Habil Sirdar, Sheikh Muhdee, Gopeenath Manjee, Aradhun, Sumboo Chung, Boodaee Manjee, Surroo Manjee, and Sumboo Manjee, were charged with personally superintending and directing the commission of an affray, on certain lands, called the Bunds of Baleegoona, Deespakea, and Pujjarhuttee, Pergunnan Shindree, zillah Dacca Jelalpoor, on Saturday the 30th of Chyt, 1230, B. S. corresponding with the 10th of April 1824, in which affray Bukhtear Khan was wounded in the breast by the thrust of a spear from the hands of the prisoner Azeem Sirdar, of which wound he died on the 5th Bysakh, 1231, and Sheikh Bukhtear, one of the prosecutors, was wounded in the arm with a spear by the prisoner Habil Sirdar. The prisoners Azeem Sirdar and Habil Sirdar were charged with being engaged in the said affray, and wounding the deceased and the prosecutor in the manner above stated, and the remaining prisoners with being concerned in the said affray.

Ram Gopal Sircar was a Gomashta of Doorga Guth Rai, the proprietor of the village of Rooha. The deceased, the wounded prosecutor, and the witnesses for the prosecution, were ryots and dependants of the said proprietor. Bholanath was a Gomashta, and the other prisoners ryots and dependants of Moonshee Nizamoodeen, the proprietor of a *zumeendaree* in the neighbourhood.

The prosecutors deposed, that on the day charged, the ryots of the village of Rooha, who had cultivated the plains of Balleegoona, Deespakea, and Pujjarhuttee, which had for many years been in the possession of Doorga Guth Rai, went to their fields to reap the rice which they had cultivated; that Bholanath Ghose came to the plains with upwards of an hundred men, ryots and dependants of his master, armed with spears and clubs, and desired them to desist; that an altercation taking place, Bholanath Ghose, Rampershad, Bunsee Ghose, and Ahmudee Meean, (the two latter of whom were not apprehended,) called out to their people to strike Sheikh Bukhtear, who was the person who remonstrated with them; on which Habil Sirdar stept forward, and wounded him on the arm with a spear, on which he (Sheikh Bukhtear) and the other ryots of Rooha fled towards their village; that they were met in their flight by Ram Gopal Sircar and the deceased, who told them to stand their ground, and began to remonstrate with the assailants, on which Bholanath, Rampershad, and the two persons aforesaid, called out to their followers to strike the deceased, who was calling out for assistance; and that Azeem Sirdar made a thrust at him with his spear, which entered his left breast under the

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collar-bone, and caused him to fall senseless; that he was immediately carried to the house of Zakiroodeen, an inhabitant of Rooha; that on this the assailants, who had brought reaping hooks with them, proceeded to cut the crops, and carry off the produce to Mowza Semleea, a village belonging to Moonshee Nazimoodeen: that they sent information to the police Thana, but, as no notice was taken of the complaint, Ram Gopal, on the 4th day, took the deceased in a boat to Fureedpoor, and presented a petition to the Magistrate, stating the circumstances of the case; and that the deceased died the next day, after having been examined by the Magistrate. It appeared that the lands had been claimed by Nizamoodeen, and were the subject of a summary suit.

The deceased stated in his examination taken by the Magistrate, on the 14th of April 1824, that on the day charged, the servants of Nizamoodeen having come to cut the *Shalee* (rice) cultivated by the ryots of his master, he and others remonstrated with them, and that Azeem Sirdar struck him on the breast with a spear by order of Bholanath, Rampershad, Bunsee Ghose, and Ahmudee Mean, and that he knew not what happened after this. The witnesses for the prosecution corroborated the evidence given by the prosecutors in all material points, and recognized all the prisoners as having been engaged in the affray. Bholanath Ghose stated, in his defence, that he was not within some miles of the place of affray when it took place; that the lands had been cultivated by the ryots of his master, and that the opposite party had forcibly carried off the crop. He and all the other prisoners attempted to prove an *alibi*, but failed. The witnesses called by the prisoners individually swore, that the persons, who subpœnaed them were at the places they (the prisoners) represented themselves to be: but on cross examination, their evidence was deemed unworthy of credit.

The law officer of the Court of Circuit declared, that the evidence for the prosecution was sufficient to convict Bholanath, Rampershad, Azeem Sirdar, and Habil Sirdar of being leaders and instigators of the affray, in which Bukhtear Khan was so wounded as to cause his death; and to convict the remaining prisoners of being present and aiding in the said affray. He considered it highly improbable that the witnesses, in the confusion attendant on such a disturbance, should have been able to distinguish who struck the blows which caused the death of Bukhtear Khan, and which wounded Sheik Bukhtear, or by whose order these wounds were inflicted; and that, therefore, the crime of having actually inflicted the said wounds was not legally proved against any individuals among the prisoners. He therefore declared them all liable to discretionary punishment by *Acoobut*, according to their respective degrees of guilt.

The Judge of Circuit did not concur in this *futwa*. He observed, that the testimony of the witnesses was distinct, clear, and explicit as to the facts of the case; and that from the dying declaration of Bukhtear Khan, there was every reason to believe that the wound which caused his death was wilfully inflicted by Azeem Sirdar; and judging the case to be of that serious nature which de-

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manded the judgment of the Nizamut Adawlut, he referred the trial for the final orders of that Court.

The *futwa* of the law officers of the Court of Nizamut Adawlut declared, that the circumstances of the case rendered it impossible to fix the murder of Bukhtear Khan, or the wounding of Sheikh Bukhtear, on any individual of the prisoners, and that *Deeut* and *Kissas* were consequently barred. The same *futwa*, however, convicted the four first prisoners of the crime of affray, attended with homicide and wounding, and the remaining prisoners of aiding and abetting in the said affray, and declared them all liable to *Tazeer* for the crime.

The Court of Nizamut Adawlut, (present C. Smith,) in concurrence with the *futwa*, and adverting to all the circumstances of the case, sentenced Azeem Sirdar and Habil Sirdar to be imprisoned for ten years; Bholanath Ghose and Rampershad for seven years; and the remaining prisoners for five years with hard labour.

1825.
Mar. 15th.
Case of NUVUL GOUR RAJPOOT and DHOWKUL JUNGHARA.

LALJEE,
against
NUVUL GOUR RAJPOOT and DHOWKUL JUNGHARA.

Charge—MURDER.

On a charge of murder, one prisoner convicted of being an accessary after the fact, and of concealing his knowledge thereof, sentenced to imprisonment in banishment to another district for fourteen years: the other acquitted for want of proof, and released.

THE prisoners were charged with the wilful murder of Kishoree, the first cousin of the prosecutor, and tried for that offence at the Bareilly monthly sessions for January 1825.

The prosecutor deposed, that the deceased lived in the same house with him in the village of Burara; that on Saturday, 27th December, 1823, the deceased left his house, telling him, that Dhowkul Rajpoot, an inhabitant of Nugurea, owed him twenty-five rupees, and had 15 head of cattle belonging to him, and that he intended to demand payment from him; that notwithstanding he did not return the next day: this gave him (the prosecutor) no uneasiness, as he was in the habit of staying at night in the village of Deohurra, by some of the inhabitants of which he was employed to graze cattle, his employment being that of a cowherd; that having been informed, on Sunday evening, that the body of the deceased had been found lying in a dry nullah in the neighbourhood, he went to the spot, and found the body with the head cut off: that on this he went to the village of Nugurea, where he found the Darogha of the Thana of Allapoor, in whose jurisdiction the village was, and mentioned to him his suspicions of Dhowkul; that the Darogha had already apprehended him, and sent him to the Thana, and finding blood stains on the cloths of Nuvul, apprehended him also. The body found in the nullah, which was about a mile from Nugurea, was clearly recognized to be that of Kishoree, both from the features, and from one of the hands being defective, which was the case with the deceased, who was born with

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only a thumb and finger on one hand. The head was separated from the body: there was a sword wound on the face, and another on the neck of the corpse, just above the shoulders. The whole of the clothes worn by the deceased, when last seen by the prosecutor, were found near the body. Ten rupees in cash, and a club which the deceased had with him, were not found.

The evidence against Nuvul consisted of his Moofussil and Foujdary confessions, and the blood stains on his clothes. When examined by the police officers in the Moofussil, he denied that he himself murdered the deceased; but confessed that Dhowkul, his maternal uncle, had done so in his presence. He stated, that on the day charged, Kishoree had come to Dhowkul's house in the village of Nugurea; and that towards evening Dhowkul told him that a person was to bring him some stolen cattle, and that he (Nuvul) must go with him to take charge of them. That Dhowkul then went to his field, and that he and the deceased followed him at night; that they all three sat down together, and an altercation ensuing between Dhowkul and the deceased, the latter said he would next day shew him a *tumasha*; that Dhowkul on this threw him down, killed him, and cut off his head with his sword; that he then wrapped the body in the deceased's blanket, and attempted to carry it off, but that it being too heavy for him to carry without assistance, he (Nuvul) assisted him, and they slung it over the deceased's stick, and threw it into the nulla, which is about a mile from the village; that Dhowkul then washed his sword in a pool of water, and hid it in his stack of *Bajra*, which is about 40 paces from the village. The sword with which the murder was said by Nuvul to have been committed, was found in the *Bajra*, as pointed out by him. The edge of it was much knotched. He said that no one brought any stolen cattle to them, and that he was quite unaware of the intention of Dhowkul to kill Kishoree, and that his clothes were stained with blood by assisting Dhowkul to carry the body to the nullah. When examined before the joint Magistrate, he made a confession to the same purport. On his trial, he acknowledged that he made the two confessions above stated, but denied the truth of them, saying that the Thanadar of Allapoor instigated him to confess, and that Chundee and Phophee, Zumeendars of his village, told him to confess as he had done, saying that they would get him off. He also stated, that he had been deranged for some years. The evidence against Dhowkul consisted merely in his being implicated by the confession of Nuvul, the fact of his sword being found, and certain marks, apparently of blood, on his clothes. He however denied that he knew of or had any thing to do with the murder, throughout all stages of the investigation. He acknowledged, that the sword which was produced from among the *Bajra* was his; but declared, that he had left it in his house, and that Chundee and Phophee had instigated Nuvul to charge him with the murder, and had hidden his sword in the place where it was found, with a view of injuring him: their enmity to him, he said, arose from a suspicion they had formed, that he had enticed away from Phophee a woman who had lived with him as a concubine.

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The marks on his clothes, which were supposed to be blood stains, he said were the stains of *paun*, and some blood which flowed from the finger of a child of Phophee, whom he had carried in his arms some days before the murder. This, however, he could not prove.

The law officer of the Court of Circuit was of opinion, from the confession of the prisoner Nuvul, and the facts of the case, particularly the established fact, that the deceased was killed by blows of a sword, that a sword was found which Dhowkul acknowledged to be his, the blood stains on the garments of the prisoners, the distance to which the body was carried, which shewed that two persons must have been concerned in the murder, and the circumstance of Dhowkul having been in debt to the deceased, raised a strong presumption of murder against both the prisoners, which rendered them liable to punishment extending even to death, if the ruling power thought fit.

The Judge of Circuit, in referring the case for the final sentence of the Court of Nizamut Adawlut, declared, that on mature consideration of the evidence, he had no doubt that Dhowkul killed the deceased with the sword which was produced in Court, and which he acknowledged to be his, because he (Kishoree) demanded payment of a debt due to him by the said prisoner, and that Nuvul was the accessary of Dhowkul before, during, and after the murder; and stated it as his opinion, that Dhowkul was deserving of a capital sentence, and that Nuvul should either be hanged with him, or sentenced to stripes and imprisonment in transportation bayond seas for life.

The law officers of the Nizamut Adawlut convicted the prisoner Nuvul, on his own confession, of privity to murder, and of having aided the murderer in concealing the body of the slain, and declared that there was a strong suspicion that he himself had wilfully committed the murder; and that he was therefore liable to discretionary punishment extending even to death by *Acoobut*. With regard to the prisoner Dhowkul, they declared that the murder was not proved against him, and that the slight suspicion which arose from the stains on his clothes, and the finding his sword, was not sufficient to render him liable to *Tazeer*. They therefore declared him entitled to his release.

The Court of Nizamut Adawlut, (present C. Smith and W. B. Martin,) after weighing all the circumstances of the case, were of opinion, that there was a strong probability that the prisoners had deliberately planned and executed the murder of Kishoree, in order to free Dhowkul from the demand made against him by the deceased. They however concurred with their law officers in thinking that the finding of the sword was insufficient to convict the prisoner Dhowkul of the murder; and it being an established rule that the confession of an accomplice, unless corroborated by strong proof, is insufficient to warrant a conviction, they acquitted him, and ordered his immediate release. With regard to Nuvul's confession, the Court did not think it sufficient to convict him as a principal in the murder. They however convicted him of being an accessary af-

ter the fact, in assisting in carrying off the body of the person murdered, and in concealing his knowledge of the fact, and sentenced him to be imprisoned for the term of fourteen years with hard labour in banishment to another district.

1825.
Case of NUVUL GOUR RAJPOOT and DHOWKUL JUNGHARA.

GOORDIAL,
against
MUSST. BHUGTEEN.

Charge—MURDER.

1825.
March 23d.
MUSST. BHUGTEEN'S case.

THE prisoner Mussummaut Bhugteen was charged with the murder of her daughter, aged six years, by throwing her into a well, and was tried for that offence at the 2d sessions of 1824, for zillah Juanpore. The case was briefly as follows. The prisoner was the mistress of a sepoy, named Ramdial, absent with his corps at Neemuch, whose wife was also left behind, and resided in the same village as the prisoner. The sepoy had sent some money by a friend to be given to his family, but without specifying to which particular individual it was to be delivered. A dispute arose between the wife and the mistress, who each claimed the whole, and at last arbitrators were appointed, who determined that the sum sent should be divided equally between them. The prisoner, in a phrenzy of rage at this decision, seized one of three children, (a girl of about five years old, which she had by Ramdial,) and ran to a well with the intention of throwing herself and the child into it. She was seized, and prevented from destroying herself by one Dulsingar; but he overtook her only at the brink of the well, into which she had already thrown the child, which was taken out dead.

The prisoner, in a sudden fit of passion, threw her young child into a well, by which it was drowned. In consideration of the suddenness of the act, and the absence of all malice: sentence, ten years imprisonment.

In referring the case, the Judge of Circuit observed, that the state of mind under which the act was committed, formed the only plea in favour of the prisoner, which he could perceive to offer to the Court's consideration in mitigation of punishment.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of the murder of her own infant daughter, by throwing it into a well of deep water, declared she would be liable to suffer death by *Kissas* for the crime, were she not the mother of the murdered child.

The Court of Nizamut Adawlut (present C. Smith and H. Shakespear) concurring in the *futwa*, and adverting to all the circumstances of the case, especially the sudden impulse under which she acted, and the absence of all malice towards the child, sentenced the prisoner Mussummaut Bhugteen to be imprisoned for ten years in the jail of zillah Juanpore.

1825.
March 23d.
Case of GOOLAB RAI and SHEO PERSHAD.
A cash-keeper convicted of having removed a sum of money from the public treasure chest without authority, held to be guilty of a misdemeanor under the provisions of Regulation II. 1813: sentenced to one year's imprisonment in the civil jail, without labour or irons.

GOVERNMENT,
against
GOOLAB RAI and SHEO PERSHAD.

Charge—EMBEZZLEMENT OF PUBLIC MONEY.

THIS trial was held at the second sessions of 1824, for zillah Moradabad.

The prisoner Goolab Rai, late cash-keeper on the establishment of the Tehseeldar of Cossepoor, southern division, Moradabad, was charged with having embezzled and appropriated the sum of 420 rupees, deposited in the treasury under his charge. Sheopershad was at the time Tehseeldar of Cossepoor, and was charged with being accessary to the embezzlement.

The statement of the case given in by the Government pleader, who was the prosecutor on part of Government, was as follows. The Board of Commissioners having ordered, that the Tehseeldars should nominate their own cash-keepers, Sheopershad, on the 15th of September 1823, recommended that Jualanath, the then treasurer of Cossepoor, should be dismissed, and that Goolab Rai should be appointed in his room. He was accordingly appointed, and remained in office till the 21st of December 1823, when Goolzari Mull, who had been sent to relieve him, arrived at Cossepoor. On counting out the cash in the treasure chest, it was found that there was a deficit of 420 rupees. This sum, the prisoner Goolab Rai said, he had lent to some of the officers in the Tehseeldar's office, and begged his successor to take these debts on himself, and give him a receipt for the full sum which should have been in the treasure chest. On Goolzari Mull's refusing to comply with these requests, and after Mohun Singh, the Jemadar of the Tehseeldary peons, had exerted himself to compel Goolab Rai to refund the money, he did so in the presence of the Tehseeldar. These facts being reported to the revenue authorities, the prisoners were made over to the Foujdary Court, by whom Goolab Rai was committed to stand his trial before the Court of Circuit for embezzlement, and Sheopershad for being accessary to the same, in as much as he introduced the said prisoner into the service, and had allowed him to make good the deficiency, without reporting the circumstance to the Collector.

Goolzari Mull deposed, that having been appointed cash-keeper in the room of Goolab Rai, he arrived at Cossepoor, late in the evening of the 21st of December, and produced two *perwanas* to the Tehseeldar; one dismissing Goolab Rai, and the other being his own *sunnud* of appointment; that the next day (22d December) he went to the Tehseeldar's Cutcherry, and on inspecting the books, found that there should be 967. 10. 9 in the treasury; that Goolab delivered to him 547. 10. 9, and said that the sum of 420 rupees, which should have been in deposit, had been lent by him to the Tehseeldar and other officers on his establishment, and requested him to allow him credit for that sum, and take the debt into his own hands: that on his refusal to

do so, the Tehseeldar joined in the request; that he said he could not do so without the permission of the Collector's treasurer, whose dependant he was, and accordingly reported the circumstance to him by letter; but before his answer was received, the whole amount of the deposit was paid into his hands, and he gave a receipt in full for the sum, which, according to the account books, should have been in the treasury.

It was proved by the depositions of Mohun Singh, the Jemadar, and several of the Tehseeldar Chuprassees, that on the deficiency being discovered, Mohun Singh urged Goolab Rai to refund it, and placed Chuprassees at the door, with instructions not to allow him to leave the house till he had repaid it; and that in consequence of this, Radha Kishen, the father of the prisoner Goolab Rai, procured money in the bazar, and paid the full amount of the deficiency into the hands of Goolzari Mull.

Both the prisoners pleaded "not guilty." Goolab Rai denied that there had been any deficiency, and stated, that he delivered over to the new cash-keeper the full amount of the sum which, according to the account books, should have been in the treasure chest. Sheo Pershad stated, that the accusation was false; that Goolab Rai delivered the money in the treasury to Goolzari Mull, and got a receipt from him; and that the accusation was framed after the receipt had been given, at the instigation of the Naib Tehseeldar, through enmity to him. Both prisoners called witnesses to prove that they bore most respectable characters; and Sheo Pershad pleaded that the character which he had borne during a period of nearly 20 years in the service of Government, should exonerate him from suspicion of being concerned in such malpractices.

The law officer of the Court of Circuit convicted the prisone. Goolab Rai, on strong presumption, of *Khianut* (fraud), in having made use of the public money entrusted to his charge, without permission of the *Hukim*, and declared him liable to discretionary punishment by *Acoobut*; and acquitted Sheo Pershad, as the evidence against him was not sufficiently strong to warrant a conviction. The Circuit Judge, concurring with the *futwa* with regard to the acquittal of Sheo Pershad, directed his immediate release. As he did not concur in the conviction of Goolab Rai, he referred the trial to the Court of Nizamut Adawlut. He stated it as his opinion, that the crime of embezzlement was not proved against Goolab Rai: he considered the acts charged against him to amount to no more than an endeavour on his part to prevail on the relieving cash-keeper to take upon himself the responsibility, and the claim and title to the money advanced by him to other members of the establishment, as it appeared even by the testimony of Mohun Singh, that the money was right in the treasure chest on the evening preceding the day he was to deliver over charge to his successor. He also expressed his opinion, that the case did not come within the provisions of Regulation II. 1813.

The law officers of the Nizamut Adawlut considered the prisoner convicted on violent presumption, of the crime of applying to his

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use the public money, in as much as he, without authority, removed it from the treasure chest, and retained it in some other place, and declared him liable to discretionary punishment by *Seasut*.

The Court, on mature consideration of the circumstances of the case, were of opinion, that it was clearly proved that there was a deficit of 420 rupees when the money was counted out and delivered over to the new cash-keeper, and that, although the prisoner might not have intended eventually to embezzle this money, yet he was guilty of a misdemeanor, within the provisions of Regulation II. 1813.

They therefore sentenced him to be imprisoned in the civil jail for the space of one year without labour and irons*.

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Mar. 29th.

Case of BYJNATH and others.

KASI MAHOMED,
against
BYJNATH and seven others.

Charge—MURDER.

Case of gross maltreatment andtorture, (apparently to extort confession of theft,) which ended in the death of the person abused: principal sentenced to 14 years imprisonment: three accomplices to 10 years imprisonment each: two accomplices in an inferior

THE prisoners mentioned below, were tried at the 2d sessions of 1823, for zillah Dacca Jelalpore. Byjnath with causing the seizure of Moosa Mahomed, brother of the prosecutor, and violently assaulting and beating him, and thereby causing his death, and attempting to conceal the circumstance, by throwing the body tied up in sacks into the river: Kooshye, Zuheeroodeen, Gorachand, and Hissamoodeen with being accomplices in the case, and by the instigation and desire of the prisoner Byjnath, seizing the deceased, beating him, causing his death, and throwing the body tied up in sacks into the river: Mooteeoollah with being an accomplice in the case, seizing the deceased, and attempting to conceal the circumstance of his death: Madhup Soodr with making water into the mouth of the deceased, on his asking for water to drink, when he was in a senseless and helpless state: Ramguttee Dutt, with performing *Nulchalan*†, and being an instigator by that means of the death of Moosa Mahomed; and Ramnarain Rai with being accessary to the crime. The particulars of this case appeared to be, that the prisoner Byjnath, Gomashta of an indigo factory established at Sadukabad, the property of Mr. John Mackay, several days previous to the seizure and murder of the deceased, lost some property by burglary and theft, from one

* By the provisions of Regulation II. 1813, Khizanchecs, Tehseeldars, and other native officers entrusted with the charge of public money, are prohibited from making use of such money for their own advantage, or that of any other individual; and persons infringing this rule are rendered liable, on conviction, to discretionary punishment by imprisonment, without stripes, labour and irons.

† A species of ordeal, performed by means of two cane sticks, for the purpose of detecting a thief. It is supposed, that when the sticks touch the guilty individual, they will unite of their own accord, and thus indicate the offender.

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of the out houses where he lodged. Being unable to discover the offenders, he sent for the prisoner Ramguttee to perform the process of the *Nulchalan*, which casting up the names of the deceased Moosa Mahomed, his brother Lal Mahomed, Shaikh Bhasye, Fakeer Mahomed, and others, he dispatched the prisoners Kooshye, Zuheeroodeen, Gorachand, and Mooteeoollah, to apprehend the two former, and they were accordingly brought to the factory, and imprisoned in one of the godowns, (where Kunnye Mundul, Buggeerut Mundul, and Sheih Burkutoollah were suffering similar restraint,) until about the hour of 9 o'clock on the night of the 28th of Chyte 1229, corresponding with Tuesday, the 9th April 1823, when Kooshye, Zuheeroodeen, and Gorachand took them, by order of Byjnath, into his presence at the office, where he was sitting with the prisoner Ramnarain Rai and other friends; and suspending them by their arms to the beam or rafter, beat them severely with a stick or ruler, and an iron instrument used for pounding bricks, for the purpose of compelling their confesssion of the theft, and the production of the property. Failing to obtain his purpose, he remanded them to the godown; but immediately afterwards sending for the deceased, he caused him to be again suspended in a similar manner, and similarly beaten with the same instruments, until he became senseless, and when loosed, sunk to the earth from pain and exhaustion. Being removed in that state by Kooshye, Zuheeroodeen, and Gorachand towards the godown, the prisoner Madhup Soodr, on his recovering sufficiently to ask for water, by the direction of Gorachand, made water in his mouth; after which he was cast into the same godown, and shortly expired. It would appear also that the prisoner Hissamoodeen and Suroop Bendaree, not apprehended, assisted in beating the deceased and others, and that Hissamoodeen, at one period, violently beat the factory drum to overpower the sound of their cries. On receiving the intelligence early on the following morning of the death of the deceased, Byjnath proceeded to the godown to satisfy himself of the truth, and removing Loll Mahomed, Kunnye Mundul, Buggeerut Mundul and Burkutoollah into another apartment, caused the door to be locked. Ramkissen Gungoolee, being informed of the seizure of Bhasye, Fakeer Mahomed, Fakeer Mahomed 2d, and Sheikh Pran, came with the prosecutor to demand their release, as well as that of Moosa Mahomed and Lal Mahomed, which was accordingly conceded, and, in excuse for the non-appearance of Moosa Mahomed, Byjnath represented, that he had released him on security; and, availing himself of the opportunity of the night to remove the body, caused it to be enveloped in three sacks, one of which bore the mark of the factory, and filling another sack with the broken materials of a terrace, to the weight of 80 pounds which was attached by a cord to the loins of the body, caused it to be thrown by Kooshye, Zuheeroodeen, Gorachand, and Hissamoodeen (according to their confessions), into the adjacent river Areel Khan, where it subsequently floating, was observed by one Dhurmnarrain Deb, who supposing the sacks to be bales of cotton,

degree, one to seven, and the other to two years imprisonment: and two others acquitted.

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dragged them to the shore, when he discovered that they contained a human body. Communicating immediate information of the circumstance to the Darogha, who had proceeded previously to the factory to investigate the fact of the murder, the body was conveyed there, and was recognized to be that of Moosa Mahomed. The eye-witnesses to the inhuman and savage treatment exercised on the deceased were Lal Mahomed and Sheikh Pran. Sheikh Pran was under partial restraint only, in another apartment, and was also abused. Lal Mahomed deposed, that he was insensible, from the violence committed on him, and therefore did not actually witness the death of his brother, but found him dead in the morning. Kunnye Mundul, Buggerut Mundul, and Burkutoollah witnessed his death, a short time after he was thrown into the godown a second time. The guilt of Byjnath, Kooshye, Zuheeroodeen, and Gorachand was clearly proved, but they denied their guilt on the trial.

The *futwa* of the law officer of the Court of Circuit acquitted those prisoners of the commission of wilful murder, in which acquittal, the Judge observed, that he could not readily concur, the murder having been attended with very aggravating circumstances. The prisoners Hissamoodeen, Mooteeoollah, Madhup Soodr, and Ramnarain Rai, the law officer convicted of the charges on which they were indicted; Hissamoodeen on the minor offence; and acquitted the prisoner Ramguttee, which the Judge approved.

The *futwa* of the law officers of the Nizamut Adawlut, convicting on presumption, the prisoner Byjnath of causing Moosa Mahomed to be seized and beaten, in consequence of which he died, and of placing his corpse into a bag and throwing it into a river to conceal the fact; the prisoner Kooshye, Zuheeroodeen, and Gorachand, of seizing and beating Moosa Mahomed, under the orders of Byjnath, in consequence of which he died, and throwing his corpse into the river to conceal the fact; the prisoners Hissamoodeen and Mooteeoollah of seizing the said Moosa, under the orders of Byjnath; and the prisoner Madhup Soodr of making water in the deceased's mouth after the beating, when he called for water, declared the above-named prisoners liable to severe *Acoobut*; and acquitting the prisoner Ramnarain Rai, declared him entitled to his release.

By the Court. C. Smith, (officiating Chief Judge). "On weighing the evidence, I think the proof sufficient against Byjnath, Zuheeroodeen, Gorachand, Kooshye, Hissamoodeen, and Madhup Soodr: the other two I would acquit. I do not consider it as a case of wilful murder, but one of culpable homicide, with aggravating circumstances. The five first of the six convicted persons I would sentence to imprisonment with labour for seven years, and the sixth to imprisonment for two years, with labour."

H. Shakespear, (officiating Judge.) "I concur with the second Judge in finding the prisoners Byjnath, Kooshye, Zuheeroodeen, Gorachand, and Hissamoodeen guilty of culpable homicide, with aggravating circumstances, and the prisoner Madhup Soodr of aiding in the same in an inferior degree; and I concur in the acquittal of Mooteeoollah

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and Ramnarain. Considering Byjnath to be the instigator, and Kooshye, Zuheeroodeen, and Gorachand the instruments, of the excessive cruelty exercised upon the deceased, which occasioned his death almost immediately, and the aggravated guilt of the prisoners in attempting to conceal it, by throwing his body into the river, I am of opinion, that the sentence of seven years imprisonment proposed to be passed on those prisoners is insufficient. I think the first ought to be imprisoned for fourteen years, and the three others for ten years with hard labour. I concur in the proposed sentence, as it affects the prisoners Hissamoodeen and Madhup Soodr."

W. B. Martin, (fifth Judge.) "Considering the very aggravated circumstances of this atrocious case, I would sentence Byjnath, Zuheeroodeen, Gorachand, and Kooshye, to the punishment proposed by the officiating Judge, Mr. Shakespear; that is, the first to fourteen years, and the three last to ten years each with labour. I concur in awarding to Hissamoodeen and Madup Soodr the punishment adjudged to them respectively by the second and officiating Judges, and in the acquittal of Mooteeoollah and Ramnarain." Sentence was issued accordingly, in conformity to the opinions of the fifth and officiating Judges.

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April 5th.
Case of HUSSEIN ALI and others.

MAHOMED AKBER,
against
HUSSEIN ALI and six others.

Charge—AFFRAY, attended with HOMICIDE.

Conviction of affray, attended with the murder of a slave. The price of the slave declared to be due from the *Aukila* of the principal offender, and himself to be liable to *Acoobut*, and the aiders and abettors to *Tazeer*.

THE prisoners Hussein Ali, Aboo, Fukeera, Moteeoolla, Fiddea, Jewun, and Bukshee, were charged with the murder of Yusoof, a slave of the prosecutor, in the prosecution of an affray, on Tuesday, the 6th July 1824. The case was tried at the 2d sessions of 1824, for zillah Chittagong.

It appeared from the evidence for the prosecution, that the prisoner Hussein Ali had mortgaged to the prosecutor a piece of land, for the sum of 180 rupees, and that the prosecutor held possession thereof as mortgagee: that the said prisoner having shewn an intention of resuming possession, previously to the affray which was the ground of the present prosecution, the prosecutor applied to Shuhamut Ali Chowdry, the patron of the said prisoner, to prevail upon him to repay the money lent on the mortgage: but that as he refused to pay down the full amount due, the land remained in the prosecutor's possession: that on the morning of the day charged, the deceased Yusoof, and Mahomed Akber 2d, a witness, went to the land in question for the purpose of ploughing it, and were driven away by the prisoner Hussein Ali: that they afterwards having returned and resumed their labour, the said prisoner came forward with a bludgeon, and struck Yusoof therewith on the head, and fell-

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ed him to the ground, and while he was senseless from the severity of the blow, repeatedly struck him with equal force on the chest, stomach, loins, and arms: that the prosecutor, and the witnesses Hareedhun, Mahomed Akber 2d, and Munghazee, who witnessed the assault, went to his assistance, and were immediately attacked and beaten with sticks by the remaining prisoners; that the prosecutor and Hareedhun were so severely beaten as to require assistance to get to their homes; the former being taken up by the witnesses Bonode, Mahomed Ali, and Mooktee, and the latter by the witness Zumeer and the prisoner Jeewun: that the deceased being left to himself, so far recovered as to be able to reach the house of Mahomed Akber 2d, where he was found lying senseless by Zumeer, who brought him to the house of the prosecutor, when he died on the same evening from the effects of the blows. The prisoners pleaded "not guilty," but were unable to substantiate their innocence.

The law officer of the Court of Circuit declared, that the wilful murder of the deceased was not legally brought home to any of the prisoners, but convicted Hussein Ali of that species of homicide termed *Kutl-ba-shibeh-umd*, and declared that *Deeut-i-kamila*, or the full price of blood, was due from his *Aukila*, or if he had no *Aukila* from himself. The other prisoners were declared liable to *Tazeer*, as aiders and abettors of Hussein Ali in the quarrel and affray. The Judge of Circuit concurred with the *futwa*, and considering the conduct of the prisoner Hussein Ali, in continuing his ferocious assault on the deceased with equal severity after he had felled him to the ground, and while he was lying senseless, to demand very exemplary punishment, and of greater measure than it was competent to him to award under the provisions of Regulation LIII. 1803, he referred the trial for the final orders of the Nizamut Adawlut.

The law officers of the Nizamut Adawlut convicted the prisoner Hussein Ali of so beating the deceased, a slave of the prosecutor, in an affray, as to cause his death, and the remaining prisoners of aiding and abetting in the quarrel and disturbance; and declared the price of the slave to be due from the *Aukila* of the prisoner Hussein Ali, and himself to be liable to punishment by *Acoobut*, and the remaining prisoners to *Tazeer*.

The Court of Nizamut Adawlut (present C. Smith) concurred in the conviction; but not considering the prisoners equally guilty, sentenced Hussein Ali to be imprisoned with hard labour for the term of ten years; the prisoners Aboo, Fukeera, Moteeoolla, and Bukshee for the period of seven years; and Jewun for the period of three years. In consideration of the youth of the prisoner Fiddea, he was sentenced to the mitigated punishment of imprisonment for one year.

MUSST. LOTIA,
against
GOOLABOO.

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April 21st.
GOOLABOO'S case.

Charge—MURDER.

THE Governor General in Council having nominated the third Judge of the Bareilly Court of Circuit, to officiate as Commissioner for the trial of the prisoner Goolaboo, charged with the murder of Oodia, in the year 1822, he held the trial accordingly at Delhi, and transmitted, for the consideration and orders of the Court of Nizamut Adawlut, a copy of his proceedings in the case.

Under the Court's circular order dated the 8th of May 1820, it is not necessary to refer the cases of insane persons charged with murder, where the fact of the killing may not be proved.

The prosecutrix and the deceased were inhabitants of the independant state of Joobul; and the prisoner was an inhabitant of Mouza Butyar, in the reserved Hill State of Raeen. The murder with which he was charged was committed, and the body was found, in an extensive jungle near to Mouza Seraj, also in pergunnah Raeen. The prisoner, therefore, was clearly amenable to the jurisdiction of the Court, for an offence committed within the territories subject to the British Government. From the proceedings it appeared that the prisoner was to a certain degree deranged. He was impressed with an idea that he had discovered a large store of gold, and became so troublesome, that one Sobheroo (in whose service he had been employed as a shepherd) dismissed him from his employ. There were intervals when his reason returned, and he became sensible of the aberrations to which he was subject; since he went to the house of the deceased, Oodia, in the independent state of Joobul, on hearing that he could cure madness. After a stay in Joobul of five days, he prevailed on Oodia to accompany him to the spot where the gold was supposed to be deposited, and a kid was taken by them to be offered in sacrifice; but whether to propitiate the deity who presides over the fate of insane persons, or to aid them in divining where the gold was buried, was not clear. The kid was sacrificed and roasted, and Goolaboo, on the following day, went to the village of Seraj, and informed Kesur Singh and Joogroo, that a Brahmin who had accompanied him had died while eating the roasted liver. Conceiving Goolaboo to be deranged, they paid no attention to his tale; but when, after the lapse of a week, Oodia did not return, certain of his neighbours were sent by Mussummaut Lotia in search of her husband, and when they arrived at Seraj, the strange story told by Goolaboo was related to them. Strict search was consequently made in the jungle, and the body was found in the snow. There was a wound on the side, through which a part of the bowels protruded, and one leg was broken; but it seemed doubtful whether the wound was made by a sharp instrument, or the stomach torn open by the eagles, which abound in that quarter. A pair of *paijamas*, and a weapon called a *dangra* were traced to the prisoner, which had belonged to the deceased; but the gold necklace which Mussummaut Lotia supposed to have been the temptation to murder her hus-

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band was not discovered. The prisoner pleaded not guilty of the murder, and stated, that Oodia fell from a precipice and was killed. There was no proof that his assertion was false; for in those mountains, it was not probable that any one should pass by to witness the deeds committed there. There was abundance of proof on the record that the prisoner was in the full possession of his faculties when he arrived at Oodia's house; and when he appeared before the Judge on trial, he was perfectly collected; but the Judge expressed his opinion, that he must still be subject to occasional aberrations of reason, and that if he did commit the murder, it must have been while in a state of insanity. Under these circumstances, he observed, it was evident that no reliance could be placed on the prisoner's future conduct, and that to release such a man would be dangerous. He therefore recommended that the prisoner should be confined for one or two years in the hospital for insane persons at Bareilly; and if during that time no symptoms of insanity appeared, that he should be entrusted to the care of his relations, on their giving security that due precautions would be used to prevent his doing mischief.

In reply to this reference, the following orders were communicated to the Commissioner by the Court of Nizamut Adawlut, present C. Smith (officiating chief Judge) and H. Shakespear (officiating Judge). "The Court do not infer from Mr. Commissioner Elliott's letter, that he considers the fact of the prisoner having killed the husband of the prosecutrix to be sufficiently established. The reference of the case, therefore, was unnecessary; for the circular order under date the 8th of May 1820, which requires the reference of the cases of insane persons charged with murder, is then only applicable when the fact of the killing being proved against the prisoner, he is exempted from punishment on the score of derangement. Under these circumstances, the Court order, that Mr. Elliott discharge the prisoner, as far as relates to the charge of murder, and direct such measures of precaution as he may think requisite for preventing the prisoner (whom he regards as subject to occasional aberrations of reason) from doing mischief.

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GOVERNMENT, *against* ASSUD ALI and SHEIKH MOOHUMMUD.

Charge—MURDER.

There being only four Judges present in the Nizamut Adawlut, and differing in

THE prisoners Assud Ali and Sheikh Moohummud were charged with the wilful murder of Hajee Moohummud, for the sake of his goods and merchandize, and tried for that offence at the second sessions of 1824, for zillah Juanpore. The prisoners were servants, one of a person named Hajee Mehdee, the other of the deceased Hajee Moohummud, an Arab merchant, proceeding by water, with property to a considerable amount, from Calcutta to Lukhnow. On

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opinion as to a criminal sentence, held that there was no legal objection to the exercise of his casting voice on the part of the officiating chief Judge, by a modification of his opinion in favour of the prisoners.

the arrival of their boat at Juanpore, Hajee Moohummud became so ill as to be unable to continue the journey, and a house was hired by the prisoners, into which he was removed; they appearing, not as dependants, but rather as partners in the traffic which was understood to be the object of the journey. Hajee Mehdee was the partner of the deceased, and he remained behind in Calcutta, sending his servant to look after his share of the goods. From the day on which Hajee Moohummud entered this house, he was never seen; and, in reply to enquiries made regarding him, he was stated by the prisoners to have gone to Benares. Further enquiry being made there without effect, suspicion, already excited, became stronger; and, after a great deal of well conducted investigation, and the apprehension and separate examination of the prisoners, one of them, Assud Ali, furnished such information as at once brought the fact to light. In a back court of the house above alluded to, was a small well, which well had been filled up with earth, at the request of the prisoners, on pretence that, in the rains, the ground around it being slippery, its remaining in that state was dangerous. This earth was removed, and below it, at the depth of eighteen feet, was found the body of Hajee Moohummud. The body was in such a state from putrefaction, that although the person of the deceased Hajee was recognized, it was totally impossible to ascertain the cause of his death. The clothes were on the body, and the legs tied together with a rope. The Hajee had been for some time ill with a venereal complaint, and, as appeared from the confessions of Assud Ali, was attended by one Shunker, (since absconded,) between whom and the other prisoner his destruction was concerted, but in what manner it was ultimately effected, did not appear. Both prisoners denied their guilt on trial; but the depositions of a variety of witnesses, satisfactorily detailing the facts that occurred from the period when the party arrived at Ghazeepore and hired a boat there, up to their arrival at Juanpore, and subsequently up to the date of the discovery of the Hajee's corpse, left no doubt as to their criminality.

The *futwa* of the law officer of the Court of Circuit declared them both guilty, and the Judge entirely concurred in this finding, observing, that there did not appear a single circumstance upon which he could found a recommendation to mercy in the sentence which awaited them as murderers.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners of the wilful murder of Hajee Moohummud, merchant, declared them liable to suffer death by *Seasut* for the crime.

By the Court, present C. Smith (officiating chief Judge.) "From the whole of the case, as it is established by the answers of the prisoners and the depositions of the witnesses, especially the clandestine throwing of the body into the well, the falsely giving out that the deceased merchant was gone to Lukhnow by the way of Benares, their making away with the merchandize, and their conversations with Shunker the oilman, who absconded, and who would appear to have availed himself of his being employed to cure the Hajee to perpetrate the murder, or to aid in perpetrating it, there arises a strong,

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nay an irresistible presumption, that the two prisoners, in concert with the above-named oilman, deliberately put the deceased to death, for the sake of possessing themselves of his property. The elder of the prisoners, Shah Moohummud, I would hang, and the younger imprison for life, with hard labour in the jail at Allipore.

C. T. Sealy, (third Judge.)" I would make no distinction in the punishment of the prisoners, as they are equally guilty of the crime laid to their charge. From the statements of the prisoners it is evident, that the Hajee's death was hastened by them, though from the wretched state he was in when brought on shore, it is probable that in a few days he would have died from disease. Under all the circumstances of the case, I would sentence them both to imprisonment for life with hard labour in the jail at Allipore."

H. Shakespear, (officiating Judge.) " I concur with the 2d Judge in considering the prisoner Shah Moohummud deserving of death ; but I see no sufficient ground for remitting the capital sentence in the case of Assud Ali. Both prisoners appear to me equally guilty ; the difference of age of the prisoners being small, that circumstance is no extenuation of the guilt of Assud Ali, which is aggravated by his having been the servant of the man in whose murder he participated."

W. B. Martin, (fifth Judge.) " The prisoners appear to me to be equally guilty, and therefore equally deserving of the same punishment. As the end of all punishment, however, is example, I should have been inclined to concur with the 2d Judge in passing sentence of death upon Shah Moohummud alone, under the idea that this end would have been sufficiently answered by the execution of one prisoner, and the perpetual imprisonment of the other ; but as Assud Ali was the servant of the deceased, and therefore under the peculiar obligation of attempting nothing against his master's life, his own life ought not, I think, to be spared ; and I therefore concur with the officiating Judge, Mr. Shakespear, in sentencing them both to suffer capital punishment."

Under these circumstanances, it appearing that two Judges were of opinion that capital punishment should be inflicted on Assud Ali, and two that he should be sentenced to imprisonment for life, the officiating chief Judge (C. Smith) put it to his colleagues, whether there was any objection to his exercising a casting voice in this case, and exercising it by uniting with the third Judge, and sentencing both prisoners to perpetual imprisonment. The majority of the Court being of opinion, that there was no legal objection to his modifying his recorded opinion, and to his concurring with the third Judge, by a partial mitigation of the sentence which he originally proposed, both prisoners were accordingly sentenced to be imprisoned with hard labour for life in the jail at Allipore.

1825.
April 27th.
Case of GUNESH KOORMEE and others.

GIRDHAREE,
against
GUNESH KOORMEE and ten others.

Charge—MURDER.

Conviction of affray and murder, in resistance of a civil process. Sentenced; one to imprisonment for life in the Allipore jail; three to imprisonment with labour for 14 years; and the remaining prisoner to imprisonment for seven years with labour.

THE prisoners Gunesh Koormee, Gungwa Koormee, Sookhmye Koormee, Buwannea Koormee, Gya Deen Koormee, Mungna Koormee, Sureywa Koormee, Chingwa Koormee, Chyna Koormee, Girdharee Koormee, and Munsookhwa Koormee, were charged with the murder of Mansing, the father of the prosecutor, and their trial was held at the 2d sessions of 1824, for the southern division of Bundelkhund.

It appeared from the proceedings held in this case, that a decree had been passed in the civil Court of the southern division of Bundelkhund, for a sum of money exceeding 300 rupees, in favour of the deceased, against the prisoner Gunesh, and that execution had been repeatedly sued out, but evaded by the said prisoner, and that a perwana was in consequence issued by the Judge on the 10th August, 1824, directing the Darogha of Thana Buberoo, in whose jurisdiction the prisoner Gunesh resided, to attach the prisoner's property. It was in the execution of this process that the crime with which the prisoners were charged was committed. Data Ram, the Darogha of Thana Buberoo, deposed, that he proceeded to the village of Bubragong, where the prisoners resided, on the 19th September 1824, accompanied by his Jemadar, Mohurrir, and several Burkundazes, for the purpose of executing the Judge's process: that on arriving at the house of the prisoner Gunesh, he ordered the prisoner to deliver up the key of a closet, which the deceased (who with his servant Kaloo Bramin had accompanied him) pointed out as containing the property to be attached, and on his refusal sent for a blacksmith to break open the door: that the prisoners Gungwa and Buwanea opposed the blacksmith, and thrust him out; and that while he (the witness) was remonstrating with them, he heard an uproar outside, and immediately went out and found a large body of men assembled, and that some of the prisoners were beating Man Singh: that he and his people attempted to save him, but that the assault was continued till the deceased was so beaten, that he died on the spot. He deposed, that he saw all the prisoners present aiding in the affray, and the prisoners Gunesh, Gungwa, and Buwannea actually striking the deceased with clubs; and that though he did not see the prisoner Sookhmye actually strike, he heard him call out to the assailants to beat him. He also deposed, that the prisoner Gungwa was particularly active, and that he wished to kill Kaloo Bramin, the servant of the deceased, and to ensure the death of Man Singh by cutting off his head; but that he and his people restrained him: that he managed to carry the three first prisoners with him to the Thana, and with the aid of four Suwars, afterwards apprehended the other prisoners. Gungapershad, the Mohurrir of the Thana, cor-

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Case of GUNESH KOORMEE and others.

roborated the Darogha's statement with regard to the facts of the case, and the aggravated criminality of the prisoner Gungwa. The statement received further corroboration from the evidence of the Jemadar and two Burkundazes of the Thana, and other witnesses, among whom was Kaloo Bramin, who deposed, that he, fearing that his life also was in danger from the fury of the prisoners, fled.

From the inquest on the body, it appeared that the skull was fractured, so that the brain was visible, and the body was completely covered with marks of blows from clubs. The prisoner Gunesh and Gungwa, who were brothers, did not deny that they were present, but denied that they were concerned in the assault, either personally or by command. The other prisoners, with the exception of Sookhmye, pleaded *alibis*. None of them, however, were able to prove their pleas to the satisfaction of the Court. The prisoner Sookhmye acknowledged before the Magistrate, and on his trial, that he did strike the prisoner; but stated, that he had done so by the command of the Darogha, who had accepted a bribe from Gunesh. This statement rested on his unsupported assertion.

The *futwas* of the law officers of the Courts of Circuit and Nizamut Adawlut convicted all the prisoners; the first five prisoners of so beating the deceased as to cause his death, and the remaining prisoners of aiding and abetting in the affray: and declared, that as *Kissas* and *Deeut* were barred by the doubt as to who inflicted the mortal blow, all the prisoners were liable to discretionary punishment by *Acoobut*. The Judge of Circuit concurring in the conviction, declared that he considered the five first prisoners deserving of exemplary punishment.

The Court of Nizamut Adawlut (present C. Smith and C. T. Sealy,) in concurrence with the above opinion, and adverting to the aggravated nature of the assault, which they considered to demand the most exemplary punishment, sentenced the prisoners Gunesh and Gungwa, who were brothers, and leaders in the assault, to be imprisoned for life in the jail of Allipore; Sookhmye, Buwannea, and Gyadeen to be imprisoned for the term of fourteen years; and Mungna, Sureywa, Chingwa, Chyna, Girdharee, and Munsookhwa, to be imprisoned for the term of seven years in the jail of the southern division of Bundelkhund, and the whole to be kept to hard labour.

1825.

May 3d.

Case of HOOLASEE and MUSST. MUNOOEA.

MUSST. RIKTEEA,
against
HOOLASEE and MUSST. MUNOOEA.

Charge—MURDER.

Prisoners convicted of secretly getting possession of a girl aged eight years, and deserting her in a manner which caused her death: sentenced to imprisonment for life.

THIS trial came on at the second sessions of 1824, for zillah Cawnpore. The prisoners Hoolasee and Musst. Munooea were charged with the murder of Mussummaut Gobindeea, aged eight years, the prosecutrix's niece. The prosecutrix in this case deposed, that, one morning in the month of Aghun 1231, F. S. her niece accompanied the prisoner, Musst. Munooea, to fetch cow-dung; but not having returned home, she went in the evening to enquire after the child, and was answered by the prisoner, that she knew nothing about her; that five days subsequently to being missed, the deceased was found dead at a ghaut at Nakapoor, stripped of her *nuth*, worth four annas, also her clothes. The prosecutrix further related, that she had heard, that the prisoner Hoolasee declared at the Thana that he had left the deceased alive where her corpse was discovered; and that previously to the murder being perpetrated, the child had been taken to the mother of one Mr. Patrick Fortier, who had returned her to these two prisoners. She (the prosecutrix) added, that she suspected they intended to sell the child; but imagining their having taken her away could not be concealed, they had murdered her. The prisoner Musst. Munooea, at the Thana, stated, that Musst. Rammo (not apprehended) had taken the deceased child Musst. Gobindeea, to the mother of Mr. Patrick Fortier, who one night, three days after, sent for the said Rammo, Hoolasee, and herself, and told them to take the child away; that she, the prisoner, delivered her to Rammo, but was ignorant of what Hoolasee and she did with her; and that the corpse found at the ghaut was that of the child Gobindeea. Hoolasee also related as above, in regard to the deceased having been delivered to them, and admitted that he had gone with the two other persons to Poorwurgurreeh, where he said he separated from them, and that the next morning Rammo informed him she had left the child on the plain. In their subsequent statements, however, before the Magistrate and the Court of Circuit, they declared that the child was dead when delivered to them; and that they at night went and threw the body into a place where dried cow-dung had been collected. They had no evidence to prove this assertion. Musst. Doolaree, Musst. Mobarukkuddum, and Shawnewaz, servants of the mother of Mr. Patrick Fortier, deposed to the fact, that a child eight or nine years old, had in their presence been delivered, when alive, to these two prisoners, with directions to take her back from whence she had been brought; and Musst. Fazeleh, and Musst. Aubideh, deposed to the same effect; but no one of these witnesses knew the name of the child, or to whom it belonged; nor did the Thanadar ascertain from them if the corpse found at the ghaut was that of the child they mentioned. Chundee and Gun-

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Case of HOOLASEE and MUSST. MUNOOEA.

gooa deposed to the corpse of Musst. Gobindeea having been found lying naked at the river side, with her feet in the water, and several other witnesses, to having seen the body. There were no eye-witnesses to the commission of the murder; but from the prisoners' own statements, and their not giving information of the circumstance of the deceased child having been delivered to them, the Judge of Circuit was of opinion, that there was every reason to believe they were concerned in the perpetration of the crime; and considering them both deserving of imprisonment for life, submitted the case for the final sentence of the Nizamut Adawlut.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners of secretly getting possession of a girl, aged eight years, the niece of the prosecutrix, and deserting her in a way that terminated in her destruction, and acquitting them of the charge of murder, declared them liable to *Acoobut* for the offence of which they were convicted.

By the Court. C. Smith, (officiating Chief Judge.) "As they confess upon the trial, that they had the dead child Gobindeea in their possession, and as it is fully proved that the child was delivered back to them alive; this, with the other circumstances of the case, and the connection of the prisoners with each other, amounts, in my mind, to a strong presumption of their having been concerned in the murder, and I agree with the Judge of Circuit in thinking they should be imprisoned for life."

H. Shakespear, (officiating Judge.) "I do not discover, throughout these proceedings, the motive which the prisoners could have had for murdering the child. It is not alleged that any thing was to have been paid for it by Mr. Fortier's mother, and it is not to be supposed that they stole it for the sake of its nose-ring worth four annas, and two pieces of cloth. There is no proof that the prisoner Musst. Munooea enticed the child away. On the contrary, it may be inferred from the deposition of Chundeedeen, the brother of the child, and from the evidence of Fazileh Khanum and the Jemadar of the factory, that the child was taken to Mr. Fortier's mother by Musst. Buktee, the wife of the prisoner Munooea's son. With regard to the delivery of the child by Mr. F.'s mother to the prisoners, if the story told by the prisoners at the Thana is true, the child was made over by them to Mussummaut Rummo to take it home, and she left it at night in the plain of Pooragurreea: the flight of that woman certainly gives countenance to that part of their story. The conduct of Mr. F.'s mother, and the factory servant, is also not without suspicion. From the deposition of the boy Chundeedeen, it appears, that two days after his sister was missing, he traced her to the factory; and the Jemadar states, that he was informed of the child's being missing by Misree, another brother of the child, on the 3d of December, the very day it was lost. The impression on my mind from this, and from the insufficient reason assigned for returning the child, is, that Mr. Fortier's mother and the factory servant, knowing that the child was missed, and traced to the factory, (instead of giving information at the Thana, which they

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Case of HOOLASEE and MUSST. MUNOORA.

ought to have done,) did order the prisoners to restore the child secretly; and that they, or Musst. Rummo, without taking it home, left it in the plain at night time, at a place which in the Thanadar's plan is described as being 150 paces from the spot where the body was found. In what way the child came by its death does not appear. Considering the prisoners only so far concerned in being instrumental to the child's death, I do not concur in convicting them of the murder, and sentencing them to imprisonment for life; but would, in concurrence with the *futwa*, sentence them each to seven years imprisonment in labour."

The third Judge, (C. T. Sealy,) however, concurring in the opinion expressed by the officiating chief Judge, both prisoners were sentenced to imprisonment for life, in the manner originally suggested.

1825.
May 9th.
AJOODHIA MISSER'S case.

GOVERNMENT, *against* AJOODHIA MISSER.

Charge—ASSISTING AT AN ILLEGAL SUTTEE.

Conviction of assisting at an illegal *suttee*, the widow having left a child under three years of age, and no one having executed the prescribed deed engaging to maintain it. Punishment reduced to one month's imprisonment, in consequence of long confinement before trial.

THE prisoner was charged with having assisted in burning, on the funeral pile of her husband, Musst. Deokowera, the mother of two infant children, and tried for that offence at the 2d sessions of 1824, for zillah Goruckpore. The woman was the wife of Zorawur Singh, the uncle of the prisoner. It was clearly proved by the evidence, that she was burned with her own consent, and that the prisoner endeavoured to dissuade her from doing so, promising to take proper care of her during her life; but that she refused to listen to his entreaties, and mounted the pile, when the prisoner, by her direction, set fire thereto. The illegality of this *suttee* consisted in the fact of its having taken place without information having been given to the police in time to allow them to be present, and make the necessary enquiries, and the circumstance of no written engagement having been entered into for the maintenance of the youngest child of the deceased woman, whose age was but two years. The prisoner on his trial acknowledged the fact, but pleaded ignorance of any degree of criminality attached thereto.

The law officer of the Court of Circuit convicted the prisoner of the crime charged, and declared him liable to *Acoobut*, for doing a prohibited act. The Judge of Circuit concurred with the *futwa*, and, in referring the case for the final orders of the Court of Nizamut Adawlut, recommended that the prisoner should be sentenced to a limited period of imprisonment.

The *futwa* of the law officers of the Nizamut Adawlut, convicted the prisoner of having set fire to the funeral pile on which his uncle's widow, leaving two infant children, burnt with her husband's

1825.
AJOODHIA MISSER'S case.

corpse; and declared that, as this was done by the consent of the said widow, *Kissas* and *Deeut* were both barred, but that the prisoner was liable to discretionary punishment by *Acoobut*, for having done a prohibited act, and disobeyed the supreme authority.

The Court of Nizamut Adawlut, (present C. Smith, officiating chief Judge,) on consideration of this *futwa*, and the circumstances of the case, particularly the length of time the prisoner had been in confinement between commitment and the date of the final sentence, (nearly eleven months,) thought it sufficient to sentence him to be imprisoned in the zillah jail, without labour and irons, for the period of one month, from the day on which the sentence should be communicated to him by the Magistrate.

1825.
May 12th.
Case of RAM PURSUN and BUL MISSER.

GOVERNMENT,
against
RAM PURSUN and BUL MISSER.

Charge—ASSISTING AT AN ILLEGAL SUTTEE.

Conviction of assisting in an illegal *suttee*, the female being the wife of a Brahmin, and aged but nine years, having burnt on a pile with his turban and *juneo*: 1st prisoner sentenced to imprisonment for one year without labour and irons; 2d to imprisonment for one month.

THE prisoners were charged with the murder of Musst. Buktee, a girl aged nine years, (and tried for that offence at the 2d sessions of 1824, for zillah Goruckpore,) by burning her. The first prisoner, Ram Pursun, was the son of Bul Misser, and the girl Buktee, his daughter, had been married to a Brahmin, named Geerdhari, who died at his village about six coss from the residence of Ram Pursun, in whose house the girl still resided. At the time of the death of Geerdhari, the girl was but nine years old, and the marriage had not been consummated. The body of Geerdhari was burned where he died by his relations, and his turban and *juneo* (or Brahminical thread) were sent to the house of the prisoner Ram Pursun Misser, who prepared a pile, on which his daughter burned, holding in her hand the turban and *juneo* of her husband. There was no proof that force was resorted to, to compel the girl to burn: it was even stated by some of the witnesses, that Ram Pursun endeavoured to dissuade her. He however set fire to the pile after she had ascended it, and the other prisoner was present. The sacrifice was highly improper and illegal, on two accounts; first, from the tender age of the girl, which would not admit of the idea of her free agency and voluntary devotion; and secondly, the absence of the body of the husband, which was previously burnt, without the existence of any impediment to its being preserved for the ceremony; it being laid down in the Shaster, that the female under the age of puberty is not permitted to burn, and the wife of a Brahmin cannot burn on any other *chitta*, or funeral pile, than that of her husband and *Suttees* under such circumstances being strictly prohibited by the Circular Orders of the Nizamut Adawlut, issued with the sanction of Government.

1825.
Case of RAM PURSUN and BUL MISSER.

The *futwa* of the law officers of the Court of Circuit and of the Nizamut Adawlut, convicted both prisoners of aiding in the *suttee* of the daughter of the first prisoner, contrary to orders, and declared them liable to discretionary punishment by *Acoobut*. The Judge of Circuit concurred with the *futwa* of his law officer, and recommended that the prisoner Ram Pursun Misser, who appeared to have been the chief agent in the illegal transaction, should be punished with severity, and that the prisoner Bul Misser, who had been less active, and was very old and feeble, and nearly blind, should be let off with a slight degree of punishment.

The Court of Nizamut Adawlut, (present C. Smith,) in consideration of all the circumstances of the case, sentenced the prisoner Bul Misser (in consideration of his advanced age) to be imprisoned, without labour and irons, for the period of one month from the day on which the sentence was passed; and the prisoner Ram Pursun Misser to be imprisoned without labour and irons for the period of one year from the same date.

CHYNSOOKH,
against
UMRA LODH and others.

1825.
May 18th.
Case of UMRA LODH and others.

Charge—ROBBERY and MURDER by THUGGEE.

THE prisoners Umra Lodh, Jowahir Lodh, Punna Lodh, Mudary Lodh (son of Munsookh), Sookha Rajpoot, Mudary Lodh (son of Nutha), Mukhun Aheer, and Dureao Singh, were tried at the 2d sessions of 1824, for zillah Cawnpore, on a charge of robbery and murder by Thuggee. The prosecutor Chynsookh, who was a native of the village of Kamgee Mow in the district of Furruckabad, had been for some years in the service of the Sikh chief, Raja Runjeet Singh. In the month of Kuwar 1230, F. S. he sent his brothers Chutter and Gyadeen from Lahore to his native village, with property of some value, and the sum of 300 rupees in cash. Receiving information about six months after, that his brothers had not reached their homes, he proceeded to his residence in Kamgee Mow, and made enquiries regarding them. He was at length informed by two Goindehs, named Makhee and Kinkur, that they had learned that his brothers had been murdered and robbed by Thugs, and that they had traced part of the property. Information was immediately given to the police, and part of the property belonging to the prosecutor and the missing persons found, and the prisoners apprehended. The prisoners Umra, Jowahir, Punna, and Mudary (son of Munsookh), confessed at the Thana, that they had associated with a band of Thugs in order to commit Thuggee, and that Heera, Punnooa, and Toola (who had not been apprehended) cut off the heads of three travellers with their *tulwars* near the village of Kurweh, in the territory of

The crime with which the prisoners were charged, having been committed in an independant territory, and the authority for the trial of the prisoners required by Regulation V. 1809. not having been previously obtained, the trial was held to be illegal, and annulled, and the

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Case of UMRA LODH and others.

Magistrate ordered to apply for permission to commit the prisoners for retrial at the next ensuing sessions. The Court did not think proper to order the recommitment of some of the prisoners, against whom there appeared to be no sufficient evidence, and who, had the trial been legal, would have been regularly acquitted and released.

the Begum Sumroo, while they, the confessing prisoners, kept watch at a little distance. Several articles found in their houses were proved to belong to the prosecutor and the missing persons; and the said prisoners, with the exception of Mudary, acknowledged that they had received the articles found in their respective houses as their share of the plunder. On the trial, they retracted their confessions, and pleaded "not guilty." The confessions, however, were proved by the evidence of the attesting witnesses to have been given voluntarily. The prisoner Sookha pleaded "not guilty." An iron *toreh* (or chain worn on the turban) and other articles of property were found in his house, and proved to belong to Chutter, one of the missing persons; and the prisoner was unable to account satisfactorily for their having come into his possession. Other articles belonging to the missing persons were found in the houses of Mukhun and Dureao Singh. They however brought evidence to prove, the first that the articles found in his house had been deposited there by the prisoner Umra, and the latter that the articles found in his house had been sold and lent to him by the prisoner Punna. The only evidence against Mudary (son of Nutha) was that of a witness named Gopal, who swore that the said prisoner had produced three matchlocks, which however were not proved to have belonged to the missing persons; and against Munsookh, the statement of Mukhun, in which he stated that he received a gun in pawn from the prisoner Umra or his security. The third person said to have been murdered with the brothers of the prosecutor, was supposed to have been an Aheer who accompanied them from Lahore.

The Judge of Circuit observed, that though the bodies of the missing persons had not been found, he had no doubt but that they had been murdered, and plundered of their property, and that they were the persons alluded to in the confessions of the four first prisoners. He therefore, in concurrence with the *futwa* of his law officer, (which declared the four first prisoners convicted of Thuggee, murder and robbery, and liable to long imprisonment by *Acoobut-i-shudeed* for the offence, and the prisoner Sookha, of knowingly receiving property obtained by robbery, and liable to *Acoobut*, and acquitted the remaining prisoners,) recommended that the prisoner Umra, Jowahir, Punna, and Mudary (son of Munsookh) should be sentenced to receive each 39 *corahs*, and be imprisoned with labour in transportation for life, and that the prisoner Sookha should be imprisoned with hard labour for the term of fourteen years. He ordered the immediate release of the remaining prisoners.

The Court of Nizamut Adawlut, (present C. Smith and C. T. Sealy,) having duly weighed the proceedings held on the commitment and trial of the prisoners, observed, that the crime of the four first prisoners was not committed in the district of Cawnpore, and that no authority for their being tried at that station had been obtained from the Governor General in Council, or the Nizamut Adawlut. They therefore considered the trial illegal, and annulled it accordingly. As there was every reason to believe that the spot where the travellers were murdered was situated in the independent territory

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Case of UMRA LODH and others.

of the Begum Sumroo, they directed the Magistrate of Cawnpore to make immediate application to Government, under Regulation V. 1809, for authority to commit the prisoners Umra, Jowahir, Punna, and Mudary (son of Munsookh) to take their trial at that station; to detain the said prisoners in custody till the receipt of the orders of Government, and after the receipt of the authority of Government for the trial, to commit the prisoners, and cause the attendance of the prosecutor, and all the necessary witnesses, at the next sessions for that district. The Court did not see sufficient ground for ordering the recommitment of the prisoner Sookha, as the evidence against him did not appear sufficient to convict him. The Magistrate was therefore ordered to set him at liberty. For the same reason, the Court did not direct the recommitment of the two prisoners acquitted and released by the Judge of Circuit.

1825.
May 19th.
Case of PINGWA and others.

KHEM,
against
PINGWA and three others.

Charge—MURDER.

In a trial for murder, it being proved that the deceased had entered the house of the prisoners relation with an adulterous intent, and was beaten to death by them with sticks; and it not being clear that their purpose was to kill: sentenced, under all the circumstances, to five years imprisonment.

THE prisoners Pingwa, Burrah, Sheodeen, and Choonta were charged with the murder of Ameerwa, brother of the prosecutor, and tried for that offence at the 1st sessions of 1825, for the northern division of Bundelkhund. It appeared on the trial, that, on the night of the murder, namely, the 4th September 1824, the deceased was detected by the prisoners in the house of Mussummaut Mykee, in a room separate from that in which her husband Ramdeen was lying ill: that they beat him to death on the spot with clubs, dragged him and Mussummaut Mykee out of the house, and tied them together by the hair of the head. In this state they were found by the prosecutor and several others who assembled at the moment, and all the prisoners were still seen standing on the spot; one of them, Burrah, using threats to prevent interference. The prisoners, however, shortly after fled, and absconded. Burrah, Sheodeen, and Choonta were seized the following morning at a short distance from the village; but Pingwa was not taken until two months after. Mussummaut Mykee deposed, that the murder was committed solely by the prisoner Pingwa, and that the other prisoners were standing at the door of the house, and took no active part. In submitting this case, the Judge of Circuit observed: "The conduct of the deceased, in persevering in an illicit intercourse with Mussummaut Mykee, wife of Ramdeen, a relation of the prisoners, seems to have urged them to the commission of the act with which they stand charged. Upon the whole of the evidence and circumstances, I have no doubt that all the prisoners were concerned, aiding and abetting in a violent assault upon the deceased, in which he was killed

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Case of PINGWA and others.

on the spot; and deeming them deserving a more severe punishment than I am competent to adjudge, I refer the case for the final sentence of the superior Court."

The *futwa* of the law officer of the Court of Circuit declared all the prisoners convicted on violent presumption, and liable to discretionary punishment by *Acoobut*.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Pingwa Aheer of *Shibha-i-umd*, in having killed the prosecutor's brother, and the prisoners Burrah, Sheodeen, and Choonta, Aheers, of having aided and abetted in the same, declared all the four prisoners liable to *Acoobut* for the crime, according to their respective degrees of guilt.

By the Court. C. Smith, (officiating chief Judge.) "As they used nothing but their sticks, and it is not clear they meant to kill the deceased, and as he provoked his fate by entering the house at night with an intent to commit adultery, in spite of previous warning, with Mykee, whose husband, Ramdeen, was too young himself to avenge or repel the injury, I would not sentence them to more than five years imprisonment with hard labour. The Judge of Circuit thinking that even seven would be inadequate, it requires the voice of another Judge."

The officiating Judge (H. Shakespear) concurring in this opinion, sentence was issued accordingly.

1825,
May 24th.
DOWLUT'S case.

PUNCHUMA,
against
DOWLUT.

Charge—MURDER.

Prisoner convicted of striking a person whom he wished to seize as a *baigar*, and who, in endeavouring to escape, fell into a well and was drowned. Sentence, five years imprisonment. Where one prisoner is

THE prisoner Dowlut was charged with the murder of the prosecutor's nephew Eshureea, aged sixteen years, and tried for that offence at the 1st sessions of 1825, for zillah Cawnpore. The prosecutor Punchuma deposed, that his nephew Eshureea had been seized by the prisoner and two other *mirdahs* (who had been sentenced to punishment by the Magistrate) to act as a *baigar*, which, on his refusing, having a sore upon his hand, he was beaten by them with a shoe and stick, and fell into a well, and died in consequence. He further stated, that the deceased had a wound on the back part of his head, and two or three marks upon his back, where he had been struck with the shoe. The prisoner invariably pleaded not guilty to the charge, but the above statement was sworn to by the witnesses Kadir Ali, Peer Ali, Wuzeer Ali, and Peera, who declared they saw the prisoner Dowlut strike the deceased upon the head with the club produced in Court, which was stained with blood; and that, having gone backwards a few paces, he fell into a well, out of which his corpse was taken.

1825.
DOWLUT'S case.

The Judge of Circuit, in referring this case, communicated his view of it in the following terms. "That the prisoner beat the deceased with a club, and caused him to fall into the well, is, in my opinion, satisfactorily established by the evidence adduced. I do not however believe he had any intention of occasioning his death, but consider him deserving of fourteen years imprisonment."

committed to the Court of Circuit, all implicated in the same case should be committed also.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of striking the nephew of the prosecutor with a stick on the head, in consequence of which he retreated, and falling backward into a well, immediately died, declared him liable to *Acoobut* for the offence.

The Court, (present C. Smith, officiating chief Judge, and C. T. Sealy, third Judge,) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Dowlut to be imprisoned with labour for the term of five years. The Court observing, that, in this case, the acting Magistrate punished two other persons named Asud Khan and Kurrum Khan without commitment, remarked, for the Magistrate's information and future guidance, that, where, as in this case, several prisoners are implicated in the same charge, though with different degrees of guilt, and the main charge be of a nature which renders the commitment of one or more of the prisoners necessary, the Magistrate should in such case commit all the prisoners implicated to take their trial before the Court of Circuit.

GOVERNMENT, *against* PUTCHKOURY.

1825.
May 28th.
PUTCHKOURY'S case.

Charge—MURDER and WOUNDING.

THE trial of Putchkoury, charged with the murder of his own wife, Musst. Roshun, and Musst. Hosseineea, and wounding Musst. Tajun, his servant, also Toorab Khan and Foujdar Khan, his master's servants, came on at the 2d sessions of 1824, for zillah Cawnpore. There were no eye witnesses to the commission of the crime. It appeared, however, to have been perpetrated by the prisoner, owing to the infidelity of his wife, in the month of Magh 1231, F. S. Mr. DeLaval, one of the witnesses, deposed to his having seized the prisoner at night, in the act of cutting down Toorab Khan, with his sword, inside his mother's room, where he (Toorab) had taken refuge. Toorab Khan, one of the persons wounded, deposed that he and Foujdar Khan (not in attendance) were awakened at night by the prisoner, and that he, without saying a word, wounded them severely, when he (the witness) ran to Mr. DeLaval's bungalow, and concealed himself under a bed, the prisoner following him with his drawn sword; but that his master, hearing a noise, got up and

The prisoner being convicted of murdering his wife and a procuress, and wounding a servant maid who aided her in an adulterous intercourse; also of wounding two men with whom she had

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PUTCHKOURY'S case.

committed adultery: capital punishment remitted on the ground of the provocation, and sentence, under the circumstances of the case, imprisonment for life.

seized the prisoner. This witness admitted having had criminal connection with the prisoner's wife, under the impression, however, that she was a dancing girl, as she had been brought to him by the deceased Musst. Hosseineea; adding, that he did not know who informed the prisoner of the circumstance, so as to have induced him to commit the crime a month and a half subsequently to the provocation. Kurreemoodeen, the son of the said Musst. Hosseineea, deposed to having at night heard the prisoner call his mother to him to receive some money, and a short time after saw her lying dead at the distance of about four cubits from his house. Musst. Tajun, the prisoner's servant, deposed, that she was wounded whilst asleep, she did not know by whom; and several witnesses likewise deposed to their having seen the corpse of the two deceased persons, and the wounds that had been inflicted. The prisoner Putchkoury, before the Magistrate, stated, that he had frequently occasion to suspect his wife of infidelity; and one night as he was going home, saw Musst. Hosseineea, a procuress, sitting in the road close to his house, and his female servant outside the door: that the former, observing him, called out for the purpose of giving information of his approach, hearing which he quickly entered his house, and saw Toorab Khan coming out of the sleeping apartments, and who endeavoured to effect his escape over a wall; but that he seized him by the leg, and conducted him to an outer room of his dwelling, where having quitted him to go and fetch a sword with the intention of killing him, he opened the door in his absence, and absconded: that after he (the prisoner) had questioned, and beaten his wife with a shoe, she acknowledged that she had been seduced by her female servant and the deceased Musst. Hosseineea, and confessed having had criminal intercourse with Toorab Khan and Foujdar Khan, on which account he had committed the crimes with which he was charged. On his trial, however, he pleaded not guilty; but admitted having made the above statement, in consequence of not wishing to survive the disgrace; and declared that the wounds on Toorab Khan and Foujdar Khan had been inflicted by themselves during a quarrel, and that they murdered his wife and the said Musst. Hosseineea, and had also wounded Musst. Tajun.

The *futwa* of the law officer of the Court of Circuit pronounced the prisoner convicted of the crime, on his own statement; but, in consideration of the infidelity of his wife, Musst. Roshun, of which there could be no doubt, and the disgrace brought upon him and his family, and this appearing to have been the sole cause of his conduct, the Judge of Circuit was of opinion, that fourteen years imprisonment would be a sufficient punishment, and submitted the case, therefore, for the consideration of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of murdering his own wife and another woman, and wounding three persons, declared him liable to suffer death by *Kissas* for the murders, and to *Arsh-i-jurahut* for the wounding.

By the Court. C. Smith, (officiating chief Judge.) "The murders and woundings are clearly proved, both by the confessions and the

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circumstances; and as they were deliberate, and committed under no circumstances of legal justification, I am of opinion that the prisoner should suffer death. His wife, had he found her in the act of adultery, he might have lawfully killed; but that he did not do. The procuress Hosseineea, he could not have legally killed, under any circumstances connected with this case."

Officiating Judge, (H. Shakespear.) "I concur in the conviction of the prisoner, but would commute the capital sentence to imprisonment for life. The murders were unquestionably deliberate, and committed under no circumstances of legal justification. But taking the prisoner's confession (in the absence of all direct evidence) as the groundwork of his conviction, and considering it to be true in all its parts, it details a series of provocation, which, to my mind, extenuates in a great measure the violence of which he was guilty. For fourteen or fifteen days prior to the commission of the murders, his mind had been gradually worked up to a state of jealousy and irritation by suspicions of his wife's infidelity. On one occasion, on his return home, he found the shoes of Toorab (one of the wounded men) near his bed. A few days after that, he discovered Foujdar Khan (the other wounded man) in company with his wife, who was crying, and he consoling her. Some days after this, he saw his wife, in company with the procuress Musst. Hosseineea, returning home from her house; and three days after that, he caught Toorab in his house, under circumstances which could leave no doubt in his mind of his having had connexion with his wife, and that Musst. Hosseineea was concerned in her seduction. Had he killed his wife and Toorab at the moment, he would almost have been legally justified; and there would have been much to excuse even the killing of the procuress, personally concerned as she was in abetting the act of adultery. The prisoner, however, after obtaining from his wife a confession of her having been seduced by Musst. Hosseineea and Musst. Tajun, and of her having had criminal connexion with Toorab, and also with Foujdar Khan, brooded over his disgrace for two *ghurrees*, and then proceeded to avenge himself upon the whole of them. It will be observed, on referring to the Thana depositions of Toorab, Foujdar Khan, and Musst. Tajun, (which, being taken before they were aware of the consequence of criminating each other in the seduction of the prisoner's wife, are most deserving of credit,) that they corroborate the prisoner's story of finding Toorab's shoes in his house, and of his discovering Foujdar Khan together with his wife under suspicious circumstances, and prove the fact, that the wife was seduced by Musst. Hosseineea, and that she had criminal connexion with Toorab. And although neither Toorab nor Musst Tajun admit his being caught in the prisoner's house on the night of the murders, (which they were likely to conceal for obvious reasons,) that circumstance, as forming part of the prisoner's confession, must be taken with the rest, as the groundwork of his conviction. Adverting to all the circumstances of the case, I am of opinion that the capital sentence should be remitted, and the prisoner sentenced to imprisonment for life."

LIBRARY OF THE

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C. T. Sealy, (third Judge.) "The state of mind of the prisoner, where no doubt was left of the infidelity of his wife, may I think be taken into consideration; and although the crimes he committed were great, still his punishment will be severe by imprisonment with labour for the remainder of his life. I concur with Mr. Shakespear."

The prisoner was accordingly sentenced to imprisonment for life.

1825.
June 4th.
POORUN'S case.

MANOOLLA, *against* POORUN.

Charge—BURGLARY, WITH INTENT TO STEAL.

A prisoner having been sentenced to 14 years imprisonment for the offence of burglary, with attempt to steal, unaccompanied by any aggravating circumstances, on the ground of his being a notoriously bad character, the Court of Nizamut Adawlut reduced the term to 7 years, it not appearing that the prisoner, though of bad character, had ever been before convicted.

IN the abstract statement of prisoners punished without reference by the officiating Judge of the Moorshedabad Court of Circuit, at the second sessions of 1824, for zillah Purnea, a prisoner named Poorun, was sentenced to receive twenty-five stripes with a *corah*, and to be imprisoned in banishment from zillah Purneah, and kept to hard labour for the period of fourteen years, on a conviction of burglary, with intent to steal, and notorious bad character. The case appearing to be one of simple burglary, unattended by any aggravating circumstances, the punishment awarded seemed *primâ facie* to exceed the measure of the crime, and the proceedings were consequently called for. The trial was accordingly submitted by the officiating Judge of Circuit for the final orders of the Nizamut Adawlut, accompanied by the following observations. "By the 3d section of Regulation I. 1811, it is enacted, that a person convicted of burglary shall be sentenced to imprisonment in banishment during the term of 14 years, and to corporal punishment not exceeding 39 stripes of the *corah*. By Regulation XI. 1814, it was declared, that the penalty which the Courts of Circuit are thereby directed to adjudge, is not more than adequate to the exemplary punishment of offenders convicted of burglary; but, at the same time, it was enacted, that the sentence might be mitigated in cases of extenuation, not, however, to a less term of imprisonment than seven years, nor without reason assigned for the mitigation. By clause 5, section 8, of Regulation XVII. 1817, it may appear, that for burglary attended with corporal injury, the sentence of 14 years imprisonment in banishment must be passed, because that measure of punishment having been declared not more than adequate, as exemplary, to burglary in its simple state, and even necessary when the offence may be unattended with any extenuating circumstance, the expression "such punishment as may appear adequate," which occurs in the above clause, does not, when strictly construed, seem to invest a Court of Circuit with any further discretion to mitigate. It is not necessary to refer to the title and preamble of the Regulation in support of this construction. By Regulation XII. 1818, the conclusion appears to have been arrived

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at, that burglary, and some other offences, do not very frequently demand any severe or exemplary degree of punishment; and the perpetrators of such burglaries were accordingly declared punishable of necessity by the Magistrate; but offenders in other cases of burglary, or such, it may be presumed, as demand a severe or exemplary degree of punishment, are declared by the same regulation to be, as before, punishable only by a superior Court. Amongst the several circumstances of aggravation distinguishing the more serious description of burglary, that of notorious bad character in the prisoner is specified, and perhaps there are few fitter subjects for long imprisonment than notorious offenders. Therefore, although there may be no necessary objection to the liberty enjoyed by a Court of Circuit of mitigating punishment in cases of burglary to any period of imprisonment, it may yet be urged, that the *primâ facie* fittest term for a convicted burglar of notorious bad character is the longest assigned by the law; and hence I conceived it sufficient to remark, in the case of Poorun, convicted of burglary, &c. that he was proved to be a very bad character, as a thief and burglar, and appeared incorrigible. I will shortly state some circumstances of Poorun's history, previous to the commission of the offence for which he has now been sentenced to suffer. In consequence of a burglary, he was apprehended in 1819, when Mr. Lambert was acting Magistrate, the prisoner being then stated to be a notorious bad character. In September of that year, he was ordered to be detained three years, in default of giving security, by Mr. Moore, who recorded in his proceeding of the 16th, that he proved to be a *surdar budmash*, and had no honest means of livelihood, though he lived as one in easy circumstances, and the inhabitants of the village where he resided were very averse to his release. He appears to have found security, and obtained his discharge; but was soon reapprehended, and brought before another Magistrate. Becoming again acting Magistrate, and finding him in custody, Mr. Moore ordered him to be detained, observing, among other things, in his proceeding on the occasion, that the persons who had become sureties for Poorun refused to be held any longer responsible on his account.

"The prisoner's case was revised by the Circuit Judge at the 1st session 1820, and the acting Magistrate's order was then approved and confirmed. It was again before the Court of Circuit at the 2nd sessions of that year. On the expiration of the term of three years, Mr. Moore held a proceeding, expressive of his opinion of the bad effects likely to result from his release; and the acting Magistrate who succeeded Mr. Moore, considering it proper to get an express order for his release, or otherwise, from the Circuit Judge, detained the prisoner for the purpose of laying his case before the Court. The prisoner was released in consequence by order of the Circuit Judge, passed on the 20th January 1823, at the 2d sessions of 1822, and was not again apprehended until the night of the 3d of March 1824, when he was seized while perpetrating a burglary."

After considering the whole of the proceedings on the commitment and trial, the officiating chief Judge (C. Smith) was of opinion, that

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as the burglary was not completed, as there was no theft, nor any aggravating circumstance, but that of previous bad character, and as it did not appear that, though of bad character, he was ever before convicted of any specific offence, the sentence of 14 years imprisonment was too severe, and that it should be reduced from fourteen to seven years imprisonment.

The third Judge (C. T. Sealy) entirely concurring in the above opinion, the mitigated sentence suggested was issued accordingly*.

1825.
June 4th.
TEGH ALI KHAN'S case.

GOVERNMENT, *against* TEGH ALI KHAN.

Charge—ASSAULT, WITH INTENT TO KILL.

The prisoner, a Burkundaz, in a quarrel with the Darogha, fetched from his house a blunderbuss (not proved to have been loaded), with which he threatened to shoot him: sentenced for this offence to six months imprisonment, in addition to the period (nearly a year) during which he had been already confined.

THIS trial came on at the second sessions of 1824, for zillah Goruhkpore.

The prisoner was a Burkundaz at the Thana of Bausee. One night, about 10 o'clock, he proceeded to the ghaut of the river (Raptee), and desired the people of the ferry-boat to cross him over to the opposite side, where a woman resided with whom he was intimate. They refused, unless the Thanadar should order them; and to them he appealed. He forbade the prisoner to quit his post at the Thana; and in return, was abused in the grossest manner, till he (the prisoner), having worked himself up to a phrenzy of passion, ran into his own house, close at hand, and came back armed with a small blunderbuss, with which he swore he would take the Thanadar's life. The latter managed to hide himself till morning, by which time the prisoner's rage had subsided; and he was subsequently apprehended and committed for trial. Whether he would have executed his threat, had the opportunity been afforded, could only be conjectured; but the avowed intention was the destruction of his superior officer, and in the state of mind he was in, the probability was, that he would have acted up to his word. The Judge of Circuit recommended, that he should be sentenced to fourteen years imprisonment.

* On the subject of burglaries, it may be here observed, that the Court of Nizamut Adawlut, on the 18th of May 1827, having had occasion to take into consideration the instructions contained in their circular order under date the 4th of February 1818, with reference to the provisions contained in preceding and subsequent enactments, communicated to the several Courts of Circuit their opinion, that the circular order in question should be considered to be no longer in force; clause 3, section 2, Regulation XII. 1818, imposing no *minimum* of punishment in cases of burglary attended by the aggravating circumstances therein specified.

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TEGH ALI KHAN'S case.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of rushing with a loaded blunderbuss upon the Darogha of police, with a murderous intent, declared him liable to *Tazeer* for the crime.

By the Court. C. Smith, (officiating chief Judge.) " I do not think it clear that the blunderbuss was loaded when the prisoner menaced the Darogha. At all events, there is no positive proof of this fact. The blunderbuss was not sent into the Foujdarry till nearly four months after the occurrence. Moreover, even were it satisfactorily established that the piece was loaded on the 17th of July, as the prisoner did not discharge it, I should consider it as straining the matter too far to conclude that his intent was murderous. For his foolish, violent, and insubordinate conduct he deserves punishment; and as he has already been imprisoned from the date of his commitment (the 18th of September 1824), I would sentence him to imprisonment without labour and irons for the period of six months. Fourteen years, recommended by the Judge of Circuit, exceeds al measure and moderation."

H. Shakespear, (officiating Judge.) " I concur in thinking the period of six months imprisonment, sufficient in the first instance ; but with reference to the violent character of the prisoner, I think that in addition to the sentence (under section 2, Regulation IV. 1825,) a *moochulka* should be required from the prisoner, on the expiration of his term of imprisonment, to keep the peace for the period of one year, in the sum of 200 rupees, with two sureties in the sum of 100 rupees each, in default of which the prisoner should be detained in custody until the expiration of the above-mentioned period of one year, unless the *moochulka* and sureties be sooner given."

C. T. Sealy, (third Judge.) " The prisoner was evidently in a violent rage at the time specified; but I should not, on that account, suppose that danger to the Darogha was to be apprehended from him on his release. The confinement he has already undergone has, I dare say, restored him to his senses ; and at the end of six months more, he may be set at large with safety. I concur with the officiating chief Judge."

Under these circumstances, the following sentence was issued.

" The Court, deeming the prisoner guilty of violent and insubordinate behaviour towards his superior officer, and not being satisfied that his intent was murderous, sentence the prisoner Tegh Ali Khan to be imprisoned without labour and irons for the term of six months."

1825.
June 16th.
Case of NUJUF ALI and FYZ ALI.

GOVERNMENT, *against* NUJUF ALI and FYZ ALI.

Charge—MURDER.

After taking a *futwa* from his law officer acquitting the prisoners, the Judge of Circuit concurring therein as the evidence stood, recommended that an additional witness should be examined against them; but he was apprised, that this is illegal, and ordered to release the prisoners forthwith.

THIS trial came on at the 2d sessions of 1824, for zillah Gorukhpore. The cause of the reference was thus explained by the Circuit Judge. "These proceedings are submitted under peculiar circumstances, and as demanding instructions from the Nizamut Adawlut, which I do not feel myself competent to issue to the Magistrate. The prisoners are acquitted; and, as the evidence stands, I concur with the *futwa*, that they are entitled to their release; but I by no means deem them guiltless of the crime they are arraigned for; and conceive that the additional evidence of even a single credible witness would have induced a different verdict. Further evidence did exist, (and if he who furnished it spoke truth, he was an eye-witness to the fact,) in the person of one Deenye; but the Magistrate, under a persuasion that his original depositions were false, committed him for perjury, and his testimony was consequently lost. But he has been acquitted of this charge of perjury; and in my opinion, should, under this acquittal, be readmitted as an evidence in the case: the credibility due to what he may advance, will of course be considered before any judgment be influenced by it. At any rate, there are such strong grounds for suspicion against the prisoners, even without this man's testimony, that I could not conscientiously order their release; and I submit the proceedings in both the cases for the consideration and orders of the superior Court."

In reply to this reference, the Court of Nizamut Adawlut (present C. Smith and H. Shakespear) issued the following orders.

"The Court observe, that the Circuit Judge concurs with his law officer in thinking, that according to the evidence which has been taken, the prisoners are properly acquitted, and are entitled to their release. With regard to the witness Sheikh Deenye, committed by the Magistrate for perjury, and acquitted of that charge by the Court of Circuit, he records an opinion, that that person should be readmitted a witness in the case; but the Court observe, that the Circuit Judge, thinking this, should have examined the above-named person, or, having doubts, have referred the question to this Court, before he called upon his law officer for a *futwa;* and that, after taking a *futwa*, from which, as the case stands, he does not dissent, he should (that *futwa* being one of acquittal) have issued his warrant to the Magistrate to discharge the prisoners forthwith. The Court direct, therefore, that the Circuit Judge immediately issue a warrant to the Magistrate of zillah Gorukhpore to release the prisoners, submitting an abstract of the case, in the prescribed form, for this Court's information."

KASIM ALI KHAN,
against
HUNOOMAN and three others.

1825.
June 16th.
Case of HUNOOMAN and others.

Charge—FORGERY, and ISSUING FORGED DOCUMENTS.

Fabricating seals, and affixing them to plain papers for future use, with a fraudulent intent, held to amount to forgery. The first prisoner, convicted of fabricating such seals, and selling plain papers to which the said seals were affixed, sentenced to *Nushheer*, and seven years imprisonment with labour. 2d, 3d, 4th, convicted of privity to and concealment of the said criminal practices, sentenced to imprisonment for two years with labour.

THE prisoners Hunooman, Sustoo, Benee Lal, and Ram Sahai, were charged with forgery, and tried at the 2d sessions of 1824, for zillah Gorukhpore. The offence in the present case was fabricating the seals of some of the principal Zemindars of the district, affixing them to plain paper, and selling them at a price estimated according to the nature and object of the deed or instrument required by the purchaser.

The prosecutor, the Mokhtar of Raja Sree Perkash Singh, Raja of Bansy, deposed to the following statement. The Raja had suffered considerably in the alienation of a great portion of his estate, by means of forged documents, and having reason to suspect the prisoner Hunooman of being the fabricator of the forged documents, laid a plan for his detection, through the means of one Kunhya Singh, who was formerly in the employ of the said prisoner. The prosecutor, by his master's order, went with Kunhya Singh to the Thana, and having laid a statement of the case before the Darogha, procured the assistance of two Burkundazes, whom he sent with Kunhya Singh, to whom he gave 20 rupees to purchase some forged papers from Hunooman. After a short time, the Burkundazes having apprehended the prisoner, brought him to the Thana; and Kunhya Singh having intimated to him, (the prosecutor, who had remained at the Thana,) that the prisoner had forged papers in his turban, he requested the Darogha to order him to be searched. The Darogha, having informed the prisoner of the accusation preferred against him, asked him to allow himself to be searched; on which he refused, and began to threaten the prosecutor with a prosecution for defamation of character: but when a positive order was given to search him, he rushed towards the Darogha, and stooping nearly to the ground, took the papers from his turban, and put them into his mouth. He swallowed part; but being seized on the throat by the Darogha, he ejected several pieces, one of which bore the seal of Raja Tej Singh. A piece of paper bearing a forged seal fell on the ground unperceived by the prisoner, and was picked up and delivered to the Darogha by the prosecutor; and on searching the prisoner's person, the 20 rupees paid by Kunhya Singh were found, but no other forged papers. The Darogha immediately proceeded to search the house of Hunooman and the other prisoners, which were all situated in the same enclosure, and found several plain papers bearing the seals of Raja Surrubjeet Singh, Raja Buhadoor Singh, and Raja Tej Singh, ancestors of the Raja of Bansy, and of Puhlwan Singh, a natural son of Surrubjeet Singh, and some bearing the seals and signatures of Kanoongoes.

Kunhye Singh deposed, that he was formerly in the employ of Hunooman, and that he (Hunooman) and the prisoners Sustoo and Be-

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nee Lal, his brothers, Ram Sahai his uncle, and one Tukoree, not apprehended, were in the habit of imitating the seals of the principal Zumeendars, which they used to affix to plain paper, and sell to any persons who required them, and mentioned several instances in which they had sold such papers. He stated, that after he had left the prisoner's service, the Raja of Bansy sent for him, and requested his assistance to detect the prisoners: and on his consenting, sent him with the prosecutor, as stated by him. On procuring the assistance of the two Burkundazes, he stationed them at some distance, and then proceeded to the house of Hunooman, and required from him four sealed papers, including the seal of Tej Singh, and others of the Raja's family, stating, that some person who was outside had occasion for them. Hunooman having only three of the four required ready prepared, produced them, and receiving 20 rupees for them, put them into his turban: and proceeding with the witness towards where the Burkundazes were stationed, they, on the preconcerted signal being given by the witness, apprehended him, and took him to the Thana. When they arrived at the Thana, the witness intimated to the prosecutor by signs, that Hunooman had forged papers in his turban, on which the prosecutor requested the Darogha to search him, as stated by the prosecutor. No one was present when the witness purchased the papers from Hunooman, nor was any witness produced to corroborate his statement regarding the actual forgery. The facts alleged to have occurred at the Thana, and the finding of the forged papers in the houses of the prisoners, were corroborated by the evidence of the Darogha and the Burkundazes. Two Kanoongoes, whose seals and signatures were attached to some of the papers found, declared them to be forgeries. The prisoners pleaded "not guilty." Hunooman declared, that the accusation was false, and attributed it to the enmity of the witness Kunhya Singh, whom he had discharged for theft. He denied having attempted to swallow the papers, and stated that the papers found in his turban were given to him by the said witness, and that the 20 rupees found on his person had been procured by him to pay his rents.

The *futwa* of the law officer of the Court of Circuit declared all the prisoners convicted on strong presumption of forgery, and liable to discretionary punishment by *Acoobut*. The Judge of Circuit referred the trial to the Nizamut Adawlut, as he did not entirely concur in this finding. He did not consider the prisoners equally guilty. He considered the prisoner Hunooman fully convicted of forgery and selling forged seals, and observed, that though the act did not strictly fall within the definition of forgery contained in the third clause of section 4, Regulation II. of 1807, which is declared to comprehend "all fraudulent and injurious fabrications or alterations of written deeds or papers," as well as "all counterfeit seals or signatures thereto," *viz.* to written deeds, yet the offence was of so dangerous and mischievous a tendency, that it ought to be visited with exemplary punishment, to the full extent of the powers of the Nizamut Adawlut. With regard to the other prisoners, he observed, that though there was no direct evidence to convict them of being actually con-

cerned in the overt act of selling the forged papers to the witness Kunhya Singh, little doubt could exist, from the circumstances of the said prisoners living with Hunooman in the same enclosure, and the suspicious papers found in their houses, that they were fully aware of and privy to the criminal practices carried on by Hunooman, the principal offender.

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The law officers of the Court of Nizamut Adawlut declared the prisoner Hunooman convicted on strong presumption of forgery, and liable to discretionary punishment by *Aroobut*, and declared the remaining prisoners entitled to their release. In answer to a question from the Court, they gave a second *futwa*, declaring, that though the facts of the relationship existing between the said prisoners and Hunooman, and of their all residing together, afforded grounds for presuming that they knew of and concealed their knowledge of the forgeries committed by Hunooman, yet this presumption was not sufficiently strong to warrant a legal conviction.

The Court, (present C. Smith and H. Shakespear,) concurring with the *futwa* regarding the prisoner Hunooman, and deeming the other prisoners guilty of privity to and concealment of Hunooman's criminal practices, sentenced Hunooman to undergo *Tushheer*, or public exposure, and to be imprisoned with labour for the term of seven years; and the prisoners Sustoo, Benee Lal, and Ram Sahai, to be imprisoned with hard labour for the term of two years.

KISSUN SURROOP, RAMANUND, and KEHURREA, *against* KURRUCKJEET, *alias* KHUGEE.

1825. June 17th. KURRUCKJEET, *alias* KHUGEE'S case.

Charge—WOUNDING.

THIS trial came on at the 2d sessions of 1824, for zillah Etawa.

The prisoner, having wounded the prosecutors, who entered his house, and attempted to seize him without a legal process, was not sentenced to any punishment.

The prisoner was charged with wounding the prosecutors with a sword. The parties were related, being brothers' sons. It appeared, that Radha Kishen, the elder brother of the prosecutors, was the Karindah of Shama Doss, Zumeendar of Mowzah Outwa, and on the day charged, had been making arrangements with some of the *ryots* of the village for the payment of the balances due by them, when some words took place between him and Motee, the brother of the prisoner, regarding a debt due to him by one of the *ryots*. Mutual abuse passed between them and the prisoner, after which the prisoner retired to his own house, and was followed by the prosecutors, who endeavoured to force him out of it. On this he wounded them with his sword.

The Mooftee of the zillah Court of Etawah, who officiated at the trial in the room of the law officer of the Circuit Court, who was not present, convicted the prisoner of having wounded the prosecutors, and declared, that though it was evident that the prosecutors entered

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his house for the purpose of seizing him, probably intending to disgrace him, yet he was not justified in wounding them, as he could have obtained redress, and that he was liable to punishment for so doing, the measure thereof being left to the discretion of the ruling power. The Judge was of opinion, that the prisoner should be released without punishment, as he had every reason to apprehend bad and disgraceful treatment from the endeavours of the prosecutors to drag him forth, and could not be blamed for defending himself with whatever weapon he could lay his hand upon, against persons who thus unwarrantably attacked him in his own dwelling house. He therefore ordered the prisoner to be admitted to bail, till the orders of the Nizamut Adawlut, to whom he referred the case, should be received.

The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner of the wounding; and the Court (present C. Smith and H. Shakespear) concurred therein, as to the proof of the fact. In consideration, however, of the circumstances of the case, they did not think fit to sentence the prisoner to any punishment, and ordered his immediate release.

1825.
July 14th.
CHAIT RAM'S case.

GOVERNMENT, *against* CHAIT RAM.

Charge—MURDER.

A prisoner confessing that he killed his wife in the act of adultery; there being no positive proof besides his confession, and the circumstantial evidence being rather in support of than against it, the Court directed his release.

THE prisoner Chait Ram was charged with the murder of his own wife, Mussummaut Dhunkeeah, and tried for that offence at the Bareilly monthly sessions for September. It appeared from the evidence of Sumputtee, the Chowkeedar of the village, that as he was proceeding to his home, one morning at sunrise, in the month of Bhadoon, 1231, F. S. he was informed that the prisoner had murdered his wife, and, having obtained intelligence from a child, of the direction in which he had absconded, pursued and apprehended him at the distance of about two hundred paces from the house, and then went and saw the deceased lying dead in the court-yard, with many wounds. The prisoner, he added, confessed that he had committed the crime with the *kussee* (a kind of iron instrument) produced in Court, in consequence of having found his wife in the act of adultery with one Laljee Brahmin. He further deposed, that the deceased was considered to be a woman of bad character. Three other witnesses deposed to having seen the corpse of the deceased, and the wounds that had been inflicted. The prisoner acknowledged having killed his wife with the instrument produced in Court, he having detected her in the act of criminal intercourse with Laljee Brahmin; and he alleged they had been observed by two persons named Khugee and Hunsee, two days previously to the murder, going out of

his house. These individuals he cited as his witnesses, but they both contradicted his assertion. 1825. CHAIT RAM'S case.

In submitting the case, the Judge of Circuit observed, that the prisoner having invariably declared he killed his wife in the act of adultery, and Laljee Brahmin being unable satisfactorily to prove that he was absent from his village at the time, as stated in his deposition, some credit should, he thought, be given to the statement of the prisoner; but, as the criminal intercourse was not clearly established, he did not agree in opinion with the *futwa* of the law officer, declaring that the prisoner should be released. He however considered five years imprisonment to be sufficient punishment.

The *futwa* of the law officers of the Nizamut Adawlut, finding the fact of the prisoner Chait Ram, son of Gopee Brahmin, having killed his wife, on seeing her in the act of adultery, declared him liable to no punishment, and entitled to his release.

The officiating chief Judge (C. Smith) observed, that he agreed with the Judge of Circuit as to the non-proof of the justification; but thinking so, he added, he would imprison him, not for five years, but for life.

The third Judge and officiating Judge, (C. T. Sealy and H. Shakespear,) however, expressed their concurrence in the doctrine contained in the *futwas*, and directed the release of the prisoner, therefore, without any punishment.

GOVERNMENT,
against
KHUCHURY SHAH and four others.

Charge—MURDER.

1825. July 19th. Case of KHUCHURY SHAH and others.

Case of five prisoners (*Fakeers*) convicted of sitting *Dhurna*, and assisting in the suicide of one of their companions: sentenced, in consideration of their gross ignorance, and all the circumstances of the case, to five years

THE prisoners Khuchury Shah, Buchury Shah, Buttoee Shah, Mokoreah Shah, and Areh Shah, were tried at the 1st sessions of 1825, for zillah Agra. The prisoners were of a class of *Fakeers*, called Sootrah Shahi, who go about beating sticks, and consider themselves entitled to contributions from any *bazar* or fair they please to go to. Six of these (the five prisoners and the deceased) went, in October 1823, to the shop of Chinga Mull, a *Mahajun* of Firozabad, and insisted upon receiving a rupee and a blanket, which were refused, and some trifle offered instead. They on receiving this refusal became importunate and troublesome, on which a police *Chuprassee*, being informed of the circumstance, came and sent them away. They immediately adjourned to a *tope* outside the town, and after remaining there, avowedly without food, for a few days, hanged up an effigy, supposed to represent Chinga Mull. This was however merely preparatory to more effective measures for extorting alms from him, for (the following day, the 5th of November) they dug a hole in the ground, in which one of them squatted down with his head be-

1825.

Case of KHUCHURY SHAH and others. imprisonment each.

tween his knees, and having a blanket thrown over him, was covered up with earth by three of his companions, Khuchury, Buchury, and Areh, to the depth of about four fingers, while Mokoreah stood by with his legs half buried in the ground, beating two sticks together, and having his face smeared with black ointment. These facts were proved by the evidence of Gopaul, Khooshal, and Khodabuksh. The latter saw the man covered up by Buchury, Khuchury, and Areh. Khooshal saw the preparation for burying him in the morning, and warned them not to do so; and he (Khooshal) and Gopal dug out the Fakeer after he was covered up; but the business had been then carried too far, the man being dead.

The *futwa* of the law officer of the Court of Circuit declared, that the prisoners could not be considered guilty of murder, because the deceased was consenting, and they merely assisted him. The Judge of Circuit, however, differed from this opinion altogether, and considered that the *futwa* should be dispensed with entirely. He observed, that the persons who covered him with earth were sworn to by one witness, to have been Khuchury, Buchury, and Areh; that it was clear that the prisoner Mokoreah could not have done it, for he was buried to the knees himself; that the fifth, Buttoee, appeared to have been in a state of intoxication; that there could be no doubt, then, that either Khuchury, Buchury, or Areh, or all three of them, smothered him; and that he saw no reason why Khodabuksh's evidence should not be believed, which convicted the whole three. He expressed his opinion, that Khuchury, Buchury, and Areh, should be sentenced to death, and that the other two, Buttoee and Mokoreah, should be imprisoned for life, adding, that the example would be highly beneficial.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoners of the charge, declared them entitled to their release.

By the Court. C. Smith, (officiating chief Judge.) "I do not see how one is more guilty than the other. I think them all five guilty of what the proceedings call *Huttia*, and our Regulations (see 7th of 1820) *Dhurna*; also of assisting in the suicide of the buried Fakeer. Their weeping and wailing, when, on taking him out, he was found dead, was hypocrisy: or even considering it as real, it does not follow, that in burying him they had contemplated a less fatal result. Considering their gross ignorance, and their unquestionable unacquaintance with Regulation VIII. 1799, I would sentence them all five to five years imprisonment with labour."

The third Judge (C. T. Sealy) concurring in this view of the case, a sentence of five years imprisonment was issued accordingly.

1825.

July 23d.

Case of Mokhoo Ruffoogur & Bhekaree Singh.

Case of a prisoner convicted of the murder of his wife, under feelings of shame, excited by the violation of her person: sentenced, under all the circumstances, to imprisonment for life.

GOVERNMENT,
against
MOKHOO RUFFOOGUR and BHEKAREE SINGH.

Charge—Rape and Murder.

These were two cases, but so connected, that they in fact formed but one transaction, the commission of the one offence proceeding from the provocation received from the other. The trials were held at the Dacca city sessions for the month of May. The prisoner (Mokhoo Ruffoogur) was charged with having enticed away a young woman of the name of Lutchmunee, wife of the prisoner Bhekaree Singh, from her house at night, and then committing violence on her body. Government was made the ostensible prosecutor in the case; but Fakeer Singh, Havildar, the father of the girl, was in reality the prosecutor, though he was named as one of the witnesses. It appeared from the statement of the girl herself, told by her to her relatives, and taken down by the police officers, (for there was no other direct evidence to the facts as stated by her,) that the prisoner's sister came to her on the night of the 28th of April, when she had left her husband's house, and gone a little distance to relieve nature; and while engaging her in conversation, the prisoner came forward, laid hold of her, gagged her mouth, carried her off to an empty house, and then and there committed violence on her body; which having effected, he left her. When six *ghurrees* of the night had passed, she was found by the witness Acbar wandering about the street, to whom, on being questioned, she immediately related the circumstances. On ascertaining who she was, he went and gave information to her relations; and returning with some of them, she was taken home by them. Her relations stated, that finding she did not, within a certain time, return to her house, they searched all the neighbouring houses for her, but could not find any clue to where she had proceeded, till Acbar came and gave them the information. The *lotah* and umbrella which she took out with her were found on the spot to which she went for the purpose stated. Between her house and that of the prisoner was a wall, about four feet high, in many places broken and fallen down. The habitations were close to each other; and it was admitted, that a familiar intercourse had for some time subsisted between the girl's family and that of the sister of the prisoner Mokhoo, and that she was admitted at all times into their house, notwithstanding the difference of castes, she being of the Hindoo and they of the Moohummudan persuasion. The relations declared they heard not the smallest noise when the girl went out, nor did they for some time suspect that any thing unusual had occurred, till her long stay out of the house during a rainy night, induced them to go in search of her. There was no direct evidence to bring the crime of rape home to the prisoner Mokhoo. But there was sufficient to convince every person that he had seduced the wife of the other prisoner, and by the disgrace his improper conduct

1825.

Case of MOKHOO RUFFOOGUR and BHEKAREE.

brought on the girl herself and her family, that he was the immediate cause of the event that occurred a few days after; the circumstances of which were detailed in the succeeding trial. The next morning, the husband preferred a complaint to the nearest police Thana; and the day after, the Magistrate ordered the attendance of the prisoner and the witnesses. The case was in its usual process, when on the morning of the 2d of May, a report was brought to the Magistrate that the prisoner Bhekaree had murdered his wife Lutchmunee. The evidence and confession of the prisoner clearly established the fact, and that he was driven to commit it by the disgrace his wife had brought on him, and the taunts of the prisoner Mokhoo, added to the indignity to which he had already subjected him. The prisoner committed the murder with a *koodalee*, or axe for splitting wood, the shaft of which was about two and a half feet long, and the iron from one and a half to two seers in weight; with which he struck her two blows on the right side of her head, which fractured her skull, penetrated to the brain, and caused her immediate death.

The *futwa* in the first case convicted the prisoner Mokhoo of the crime alleged against him, on strong presumptive evidence, and declared him liable to discretionary punishment; in which the Judge of Circuit concurred. The *futwa* in the second case, on the prisoner Bhekaree Singh, declared the offence established against him; that the penalty of *Kissas* was barred by the reluctance of the heir of the slain to prosecute; but that the prisoner was at the discretion of the ruling power.

The *futwa* of the law officers of the Nizamut Adáwlut, acquitting the prisoner Mokhoo Ruffoogur of the charge, declared him entitled to his release; and convicting the prisoner Bhekaree Singh Rajpoot, of the wilful murder of his wife, declared, that had the father of the deceased woman prosecuted, and supposing all the other requisites to *Kissas* attained, the prisoner would have been liable to suffer death for the crime.

The Court (present C. Smith and C. T. Sealy) concurring in the *futwa*, as to the proof of wilful murder, and adverting to all the circumstances of the case, thought fit to remit the capital sentence, and sentenced the prisoner Bhekaree to be imprisoned with labour for life in the jail at Allipore; and concurring in the *futwa* relative to Mokhoo, acquitted that prisoner, and directed that he should be forthwith discharged.

1825.
July 25th.
RAMPERSHAD SOOKUL'S case.

RAMDOOLAL JOGEE,
against
RAMPERSHAD SOOKUL.

Charge—MURDER.

It is no sufficient reason for rejecting evidence to the defence, that the witnesses named by the prisoner had been accused before the Magistrate of participating in the offence charged, but released by that officer.

THE circumstances which led to this case were nearly as follow. A sepoy escort proceeding with treasure to Commercolly, on coming to the end of their day's march, not being satisfied with the supplies that the *moodees*, where they had halted, could furnish them, sent one of their number, with one or two peons, into an adjacent village to call the leading men thereof, that their wants might be better provided for. These persons returning, reported their not having been successful, and that they had been ill-treated; upon which the Havildar in command of the escort sent a party of nine sepoys with their arms and accoutrements, attended by several of the Magistrate's and zemindary peons, to bring the principal opposers to him. On their reaching the village, and not finding those they sought after, they laid hold of two individuals named Ghureeboolla and Nujeeboolla, and in their further progress seized on the prosecutor, a feeble old man, upwards of seventy years old, whom they were carrying off, when his son (the deceased Ramtunoo) coming to his rescue, received the wound which terminated his existence. Ghureeboolla, Nujeeboolla, Sonatun Dass, Goluckchunder, and Radhamohun, all deposed to the prisoner being the person by whom the musket was fired, the ball from which, going through both the thighs of the deceased, occasioned his almost immediate death, he expiring by the time he had been conveyed to his own house at a very short distance from the spot. Zumeeroodeen, Imamoodeen, Phulwan Singh, Ramdeen, and Azeemoodeen, the peons who were in attendance, being of the number of those who had accompanied the sepoys into the village, were examined with a view to ascertain whether any provocation had been given, which might have led to this outrageous conduct on the part of the sepoys; but they denied all knowledge of what immediately led to the firing of the musket, and of the person by whom it was fired; and much credit could not be attached to their evidence. One of their number, however, Imamoodeen, was more explicit than the others; and it appeared from his deposition, that the sepoys were the aggressors. The Judge of Circuit, in referring the trial, submitted his view of the case in the following terms. "Although I have not the slightest doubt, but that the prisoner was the person by the shot from whose musket the deceased received his death wound, still I cannot think that he could have been so maliciously wicked as to have taken a deliberate aim at the unfortunate individual, as is deposed to by the witnesses who have given evidence. From the way in which they described the manner of his taking his aim, it is by no means clear that the musket was regularly brought up to his shoulder, but seems to have been fired as he held it, in a level position, without its being brought up to the shoulder. That the act of firing it, however, was voluntary, I am quite satisfied; and there being no justification for his having done so, he must be held answerable for the fatal conse-

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RAMPERSAUD SOOKUL'S case.

quences that have ensued; and I am of opinion, that he is deserving of the most exemplary punishment which the Court may think proper to inflict, short of a sentence of death. I regret that the Magistrate did not find sufficient evidence in this case to allow of his having committed the other sepoys and peons who proceeded into the village, as having been guilty of a riot terminating in the loss of the life of an unfortunate individual.

"In my opinion, the conduct of the Havildar in command of the escort, which altogether consisted of only twenty-four men, besides a Naik and himself, was most blameable, in having given directions for nine out of this number to proceed with their arms for the alleged purpose of bringing to him the party by whom the person who first went conceived himself to have been ill used; and I conceive, that the circumstance is deserving of being brought to the notice of the commanding officer of the Dacca Provincial Battalion, to which corps the detachment belongs, that he may determine whether this person should continue to hold the rank he now does. Upon similar grounds, I conceive that the peons on the Magistrate's establishment (who presumed to accompany an armed party of sepoys upon such an errand, and in a measure thus countenancing by their presence the act of violence to which the adoption of such a procedure might naturally be expected to lead) ought to be removed; as an example of the kind is much called for in this district, to shew to this class of individuals, that they must not consider themselves at the disposal of every person who may thus require their attendance on occasions which ought not to be complied with."

After perusing the whole of the proceedings in this case, the Court of Nizamut Adawlut deemed it necessary to postpone coming to a final decision, observing, that the prisoner named five witnesses for his defence before the Court of Circuit, and that these witnesses were in attendance; but that the Judge of Circuit declined examining them, upon the ground that they had been accused in the Foujdarry of having participated in the crime charged against the prisoner. The Court, however, remarked, that the witnesses in question having been acquitted and discharged from the Foujdarry, there appeared to be no sufficient reason why they should not be examined before the Court of Circuit in support of the defence of the prisoner. It was ordered, (present C. Smith, officiating chief Judge), that the proceedings in the commitment be returned to the Court of Circuit, with instructions, that Bustee Singh, Nunda Pandey, Than Singh, Mycoo Singh, and Sheodeen Pandey, the five witnesses named by the prisoner, should be examined upon oath in his presence, and that of the prosecutor, by the Judge who might next hold the sessions at the station of Jessore, and that the further proceedings should be submitted to the Court of Nizamut Adawlut for its final sentence in the case. The Court of Circuit were directed immediately to issue the necessary orders to the Magistrate of zillah Jessore*.

* The prisoner was ultimately sentenced, on the 20th of February 1826, (present Messrs. Sealy and Dorin,) to perpetual imprisonment.

GOVERNMENT, *against* LEELA GWALLA.

1825. Sept. 9th. LEELA GWALLA'S case.

Charge—RAPE.

THE prisoner above named was charged with rape on the body of Mussummaut Beeknee, a child of seven or eight years of age, and tried for that offence at the first sessions of 1825, for zillah Behar.

The only direct evidence against a prisoner charged with rape being that of the ravished girl, who was too young to be sworn, the Court directed the release of the prisoner.

The child could not be made to understand the nature of an oath, but stated on the trial, that she was cutting grass near her father's house, when the prisoner seized her, and committed great violence upon her person; that however she walked home, and told her mother of the occurrence. From her deposition, as well as that of others, who saw the child after her return home, it appeared that she was in great pain, that blood was flowing from the wounded part, and that she told them that the prisoner was the person who committed the outrages. The prisoner, who was soon after apprehended, denied the charge, and endeavoured on his trial to prove that he was at another village at the time of the occurrence, in which he entirely failed.

The law officer of the Court of Circuit acquitted the prisoner, as there were no witnesses to the fact, and the suspicion against him only amounting to *Shoobhazueef*, was not sufficiently strong to warrant his conviction.

In referring this case, the Judge of Circuit observed, that there was certainly no direct evidence against the prisoner, except the assertion of the child, that he was the person who committed the violence on her person; but there appearing to have been no previous enmity between the prisoner and the girl's relations, and the prisoner being not only unable to prove an *alibi*, but several respectable people swearing that they saw him crossing a field in the village (abusing some person) just before they heard of the occurrence, he (the Judge) was of opinion, that those circumstances, added to his violence when about to be apprehended, afforded strong presumption of his guilt, and he therefore referred the case for the final orders of the superior Court. He added, however, that from the tender age of the girl, he could not believe that the prisoner had actually deflowered her, as in that case, she would certainly not have been able to walk home; and the crime, therefore, in his opinion, only amounted to violent assault, with an intent to commit a rape.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner Leela Gwalla of the charge, declared him entitled to his release; and the Court (present C. Smith and H. Shakespear) observing, that there was not a tittle of evidence but that of the girl without oath, which would be unsafe, indeed illegal, to follow, concurred with the acquitting *futwa*, and directed that the prisoner should be forthwith discharged.

1825.
Sept. 24th.
Case of KHANDHAREE and AJEETA.

GOVERNMENT, *against* KHANDHAREE and AJEETA.

Charge—MURDER.

In the case of a prisoner standing mute, it is not sufficient, under the Court's circular order, dated August 3d 1814, that the deposition of the Assistant Surgeon be taken as to his sanity, or otherwise, but he should be examined specifically as to the cause of his standing mute.

THE prisoners Khandharee and Ajeeta were arraigned for the murder of a woman named Seohtea, and tried for that offence at the 1st sessions of 1825, for zillah Alligurh. This was a case of most cruel, wilful, and deliberate murder, the particulars relative to which are as follow. It appeared that the prisoner Khandharee, having already one wife, formed a connection with the deceased Seohtea, by whom he had a child, and that she had another child by a former husband. Khandharee finding the maintenance of two women difficult, besides the annoyance of the continual quarrels which existed between them, determined to get rid of the woman with whom he became last connected, and for this purpose engaged the prisoner Ajeeta, for the reward of five rupees, to assist in destroying her and her two children. They left their village with the woman and two children, under the pretence of going to a distance for work, and stopped at noon at the village of Cutchora, where they took victuals. They afterwards all went to sleep under a tree near a well. During the night, the prisoners cut the throats of all the three victims, and disposed of their bodies in the well. They then returned at different intervals to their own village; but the relations of the prisoner Khandharee, finding that he had returned without the woman and children, and that he gave no account of her, refused to have any communication with him. This circumstance, and the discovery of the bodies, led to the apprehension of both the prisoners at different times. Khandharee made a full confession. At first Ajeeta denied the murders; but on hearing that Khandharee had confessed, he also made a full confession. The witnesses Seoreea and Ramkishen proved the discovery of the bodies, and the marks of blood under the tree. Ghunsiam, Bukta, and Unta, proved the departure of the prisoners from the village with the woman and children, under pretence of searching for work, and their return without them. Sunlotra proved that they returned without them, that Khandharee had been turned out of his caste, and obliged to open a door to his house in a different direction from that of his neighbours, in consequence of the suspicion which attached to him. Nutha and Kisharah proved, that the prisoners stopped at their village, Cutchora, and took food under a Neem tree. Both the Thana confessions of the prisoners were proved by the witnesses Omid and Mootee: they also proved that Ajeeta was then in his perfect senses. Several of the witnesses also proved, that till he arrived at a tank called Uchul Tulao, on his way to the Court, he was in his perfect senses; but that from that time he left off speaking. Before the Magistrate, Ajeeta stood mute; but Khandharee confessed his crime. His confession was proved by Mohun Lall and Balmokond. On trial, Khandharee pleaded not guilty, denied having

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confessed, and in his defence declared that the woman and children were lost. Ajeeta, on trial, remained mute. The Judge of Circuit took the assistant surgeon's evidence as to his sanity. His own opinion, he stated, was that the prisoner stood mute by contempt; and he added, that he should not have taken the surgeon's deposition, but to satisfy the law officer.

The Circuit law officer delivered a *futwa* in the case of Ajeeta, of participation in wilful murder; but declared *Kissas* to be barred by doubts as to his sanity. To a question relative to his standing mute, he declared, that he stood mute by his own will. On a question as to the *futwa* that should be given, were there no suspicion of madness, he replied, that a sentence of *Kissas* would be proper. In the case of Khandharee, he gave a *futwa* of guilty, on proof amounting to strong presumption, and that he was liable to capital punishment by *Seasut*.

The Judge, in referring the case, expressed his own opinion, that both were fully guilty of wilful murder, and should be sentenced to death. "It was," he observed, "perfectly evident that Ajeeta was in his senses up to the day on which he arrived at Uchul Tulao, about a mile from the Magistrate's station."

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoners of having wilfully murdered Musst. Seohtea and two children, declared the prisoner Khandharee liable to *Acoobut*, and even to death, by *Seasut*, for the crime; and the prisoner Ajeeta, with respect to whom *Kissas* was barred by a suspicion of his being insane since the perpetration of the murder, to be liable to half *Deeut*.

By the Court. C. Smith, (officiating chief Judge.) "I concur entirely in the conviction of the prisoners. It would have been more satisfactory, had the Judge of Circuit, adverting to the circular order dated the 3d of August 1814, questioned the civil surgeon expressly, as to whether Ajeeta stood mute from obstinacy, or real impediment of speech or affection of mind; yet the Magistrate, the Judge of Circuit, and the law officer of the Court of Circuit, who have all seen and watched the prisoner, and examined persons respecting him, uniting in thinking that his silence is put on, I would not postpone the trial for the purpose of supplying this defect."

A. Ross, (officiating Judge.) "I entirely concur in the conviction of both the prisoners; and as it is quite evident that Ajeeta was sane when the murder was perpetrated, and that his silence after his arrival at Coel and on his trial, was put on for the purpose of escaping punishment, I think both should be sentenced to suffer death."

The fifth Judge, however, (Henry Shakespear,) concurring with the officiating chief Judge, the following sentence was issued. "The Court of Nizamut Adawlut, concurring in the *futwa* of the law officer, as far as regards the prisoner Khandharee, and deeming the prisoner Ajeeta guilty of being an accomplice in murder; seeing no sufficient reason to suppose him insane, and being of opinion, with the Judge of Circuit, that he stands mute by contempt, sentence the prisoner Ajeeta to be imprisoned with hard labour for life, in the jail

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at Allipore; and seeing no circumstances in favour of the prisoner Khandharee to render him a proper object of mercy, sentence the said Khandharee to suffer death, by being hanged by the neck until he is dead, and order that his body may be afterwards exposed upon a gibbet, at or as near to the spot where the murder was committed as circumstances may admit."

1825.
Sept. 24th.
CHUNDOO KANDOO's case.

SUDAS SEO,
against
CHUNDOO KANDOO.

Charge—ROBBERY and WOUNDING.

Under the Moohummudan law a *futwa* of death by *Seasut* cannot be given except for murder, though some authorities recognize, in abstract terms, the right of the ruling power to extirpate evil doers generally.

THE prisoner, whose trial came on at the first sessions of 1825, for zillah Tirhoot, was charged with having enticed away Ramsahye, the son of the prosecutor, forcibly taking his silver and gold ornaments, and wounding him with intent to murder.

It appeared, that on the 8th of Jeth, corresponding with the 10th of May, the prosecutor's son, a boy of not more than eight or nine years of age, was enticed away by the prisoner Chundoo, on pretence of giving him sweet *taree*. The child was missing all night, and brought back in the morning by a person named Juggurnath, without his ornaments, and wounded in the neck. This person said he had found the boy in a mango *tope*, and that the boy told him he had been robbed and nearly murdered by the prisoner Chundoo.

The account given by the boy (described as being a most intelligent child) of himself, was, that the prisoner Chundoo had enticed him to a mango garden, at a little distance from the village, and there robbed him, and squeezed his throat till he thought he was dead, and threw him into the ditch, where he remained all night. The boy said he was sensible all the time, but unable to speak, and that he was guarded during the night from the jackalls by a woman and a dog. As to the woman, he was probably under some delusion, for in the morning he was found alone by Juggernath, as before mentioned. The prisoner was immediately taken into custody, and his house searched, where the boy's ornaments were found concealed. On this the prisoner confessed having robbed the boy, but denied before the Thanadar that he had attempted to murder him. Before the Magistrate, however, he admitted having compressed the child's neck, and taken the ornaments. The Judge of Circuit, in referring this case, observed, that he had not the least doubt but that the prisoner intended to murder the boy, and thought he was dead when he threw him into the ditch. He expressed his concurrence in the *futwa*, which convicted the prisoner of enticing away a very young boy, with the intention of robbing and murdering him, and in prosecution of this intent having robbed him, wounded and squeezed his throat, till he thought him dead, when he threw him into a

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ditch ; for which he was declared liable to severe punishment by *Seasut* extending to death, at the discretion of the ruling power. The crime, he added, appeared to him to be one of the greatest atrocity, and he saw nothing in the prisoner's favour to induce him to recommend him to mercy.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Chundoo Kandoo, of inveigling away a boy, the son of the prosecutor, taking his ornaments from his body, and wounding with intent to kill him, declared him liable to *Acoobut* for the crime.

The Court, (present C. Smith and C. T. Sealy,) concurring in the *futwa*, sentenced the prisoner Chundoo to be imprisoned with labour for life in the jail at Allipore.

Previously to passing this sentence, the officiating chief Judge proposed a second question to the law officers of the Court, as to whether in any case where murder was not proved, a *futwa* could legally be given declaring the party accused liable to the punishment of death ; to which the law officers replied, that, according to all the received authorities on which law opinions are given, a *futwa* of death by *Seasut* could not be pronounced on any but a murderer, though there were authorities extant, in which, treating of the abstract powers of government, the right of extirpating evil doers, generally, was mentioned.

The Court, in issuing their sentence in this case, directed that the law officer of the Court of Circuit should be desired to attend to the answer of the law officers of this Court respecting his *futwa* of death by *Seasut*, in a case in which the wounding did not prove mortal.

GOVERNMENT, *against* BUKSHEA DHANOOK.

1825.
Sept 24th.
BUKSHEA DHANOOK'S case.

Charge—MURDER.

THE prisoner above named was charged with the wilful murder of Mussummaut Ruhseea, wife of his brother Newal, on the 17th of January 1825. The trial came on at the second sessions of 1825, for zillah Furrukhabad. The proof of the guilt of the prisoner consisted in the manner in which he was found seated on the ground, with a sword sheathed in his hand, with marks of blood upon it, and some spots of blood on his feet. The murder had been perpetrated by sword cuts on the body of the deceased, and the blood stained sword found with the prisoner was his own. There had been endeavours made to clean the sword; but blood stains still remained upon it. The body being discovered weltering in its blood in the front of the dwelling wherein the prisoner, his brother, and the

The prisoner being charged with the murder of his brother's wife, and the presumption from the evidence being that he put her to death while

1825.

BUKSHEA DHANOOK'S case.

in the act of adultery, capital punishment remitted, and sentence, imprisonment for life.

murdered female dwelt, the murderer was sought for, and the position in which the prisoner was discovered attracting the notice of the people, and the appearance of the sword being such as already described, he was immediately apprehended. He replied to the interrogatories at the time, "that he had done nothing, but slay an individual belonging to himself." The brother of the prisoner and husband of the deceased was a principal witness, and stated, he had gone out early on the morning of the occurrence, leaving in his house only the deceased and his daughter Guneshea. When the prisoner was discovered seated in the manner described, this child was in his lap. There was a confession at the Thana, denied by the prisoner before the Court of Circuit, and an incoherent story told by him as a confession before the Magistrate, which the prisoner before the Court of Circuit admitted himself to have told; but the aid of a confession, as observed by the Judge of Circuit, was not needed in the state of the circumstantial proof presented. The cause assigned for the destruction of the deceased was her being in habits of indulging in adultery; especially with one Mukhna Dhanook, with whom the prisoner, in his confession at the Thana, stated he had seen her actually engaged, just at the moment he put her to death, allowing Mukhna to escape. The child Guneshea was produced in Court, but was not examined, under the rules promulgated by the Nizamut Adawlut prohibiting the examination of witnesses without oath; because, the Judge observed, although it was evident she might have told an intelligible narrative of an event that had occurred in her presence, it was equally manifest she could not comprehend the obligations of an oath.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of Ruhsea his elder brother's wife, declared him liable to suffer death by *Kissas* for the crime.

By the Court. C. Smith, (officiating chief Judge.) "There is circumstantial evidence enough to convict him of being the murderer, independent of his confession at the Thana. That confession is proved by Rambuksh and Chhulnauth, and the statement it contains impresses me strongly with the belief of its being true. I believe that he saw his elder brother's wife in actual adultery, and taking his sword which was near at hand, put her to death, the adulterer having escaped. It is established, that the deceased woman was of loose character and habits; and it is extremely probable, that, taking advantage of her husband's being gone to another village, and the temporary absence of the prisoner also, she had invited her paramour to the house, and was in coition with him, when the prisoner came unexpectedly, and in the paroxysm of rage which this sight excited, seized his sword, and put her to death. This, though it does not justify the act, in my eyes, so far extenuates it, that I would remit the capital sentence, and imprison him for life at Allipore."

The third Judge (C. T. Sealy) concurring in this opinion, sentence of perpetual imprisonment was passed accordingly.

1825.
Sept. 27th.
Case of PANCHOO and others.

GOVERNMENT,
against
PANCHOO and two others.
Charge—ADULTERY and WOUNDING.

THE prisoner Allabuksh was indicted and tried for the commission of adultery with Musst. Halalkhornee, the wife of the prisoner Panchoo, who was committed and tried in the second case for wounding her with intent to murder, on the suspicion of the adulterous intercourse.

According to the intent and spirit of Section 6, Regulation XVII. 1817, it is equally requisite, that in charges of adultery the husband should appear as the prosecutor, whether the person prosecuted be the adulterer or the adulteress.

The adulterous intercourse was said to have taken place in the police division of Poorubdurwaza, in the city of Dacca, and was supposed to have existed during the period of one or one and a half year previous to the date of the apprehension of the prisoner Panchoo; the precise time not being defined, as no distinct act of adultery was discovered, or could be declared. But the prisoner Panchoo was charged with having wounded Musst. Halalkhornee, towards the morning of the 11th of Jeyth, 1232, B. S. corresponding with Monday, the 22d day of May, 1825. It appeared, that the prisoner Panchoo had long been married to Musst. Halalkhornee, and that his employment in the service of one Gregory Aratoon, at the island of Dukhun Shabazpoor, frequently occasioned protracted absence from his home; and from the circumstance of Musst. Halalkhornee being employed as a nurse to the child or children of Meer Ashruf Ali, a respectable resident of the city, she there became acquainted with the prisoner Allabuksh, who served in the capacity of Hookaburdar, and where frequent opportunities of meeting each other seemed to have given rise to the connexion. Musst. Halalkhornee being often permitted to return home, her neighbours and witnesses Sheikh Dagoo, Musst. Luchee and Peerkhan, noticed the nightly visits paid to her by Allabuksh, and his departure from her towards the morning. During this succession of intercourse, Panchoo returned from Dukhun Shabazpoor, and having acquired intelligence of it by some means or other, he severely rebuked her, and again proceeded to Shabazpoor, about a month after which Mussummaut Halalkhornee removed the materials of her house to Mahowatolee, near the residence of Allabuksh. Panchoo finding her there on his reappearance, and the day preceding his wounding her, observing her and Allabuksh (agreeably to his own confession, there being no evidence to the facts, or admission of it on the part of Halalkhornee) glancing at and making signs to each other, of which he accused her, and which she acknowledged, declaring her intention of continuing the intercourse, he became infuriated, and, towards morning, whilst she was asleep, cut her with a table knife across the throat; the pain of which arousing her, she arrested his hand, and in struggling to secure the knife, received several cuts across the fingers of her right hand. Finding himself foiled in this endeavour to destroy her, he seized a *dao*, and striking her repeatedly with it on the head near the temple, and in various parts of her body, she burst from him, and es-

1825. Case of Panchoo and others.

caped from the house, and alarming the neighbours Sheikh Meajan, Meer Buxoo, Musst. Aysha Beebee, and Mahomed Ruffee, they returned with her, and found the prisoner Panchoo rolling on the floor, having wounded himself in the throat and in the stomach.

Halalkhornee was committed and tried in the first case, for holding adulterous intercourse with the prisoner Allabuksh; but the Magistrate having, without advertence, in her respect, to the provisions of clause 4, section 6, Regulation XVII. of 1817, directed the prosecution to be conducted on the part of Government, and her husband Panchoo having in no instance desired to prosecute her, the Judge of Circuit directed her release.

The law officer of the Court of Circuit, declaring the prisoner Allabusksh to be convicted on violent presumption of having committed adultery with Mussumaut Halalkhornee, the Judge declined concurring in the *futwa*; on the consideration, that the presumption was derived from the mere circumstance of the nightly visits of the prisoner to her, and his departure from her in the morning, without the support of any observation on the part of the witnesses to any other act of familiarity between them. He added, however, that admitting the presumption in the above respect to be great, yet as the transmission of the case was necessary for the illustration of that of the prisoner Panchoo, the sentence might more properly be passed by the Court of Nizamut Adawlut. Regarding the prisoner Panchoo, he observed, from the unreserved and open nature of his confessions, and from the indisputably heavy nature of his guilt, liable to a severe measure of punishment, he had dissented from the extraordinary declaration of his acquittal by the law officer.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Panchoo Moosulmaun, of wounding his wife with an intent to kill her, on account of her alleged adulterous intercourse with one Allabuksh, declared him liable to the expense of the doctor and medicines, and moreover to *Acoobut* for the crime; and acquitting the prisoner Allabuksh of the charge against him, declared him entitled to his release. The Court of Nizamut Adawlut, (present C. Smith and H. Shakespear,) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Panchoo to be imprisoned with labour for the term of five years and directed that the prisoner Allabuksh should be forthwith released.

The Court observed, for the Circuit Judge's information, that according to the intent and spirit of section 6, Regulation XVII. 1817, the adulterer, whose conviction must necessarily involve the guilt of the wife, can be no more prosecuted by any person except the husband than the adulteress*.

* Some discussion arose in this case, as to the course pursued by the Circuit Judge with regard to the prisoner Halalkhornee, in directing her discharge from confinement without taking a *futwa*; which was illegal, as a single Circuit Judge is clearly incompetent to annul a commitment made by a Magistrate,

GOVERNMENT,
against
HOOLASA.

1826.
Jan. 6th.
HOOLASA'S case.

Charge—MURDER.

Prisoner convicted of beating a person (who trespassed on his field) so violently as to occasion his death: sentenced, unall the circumstances of the case, to two years imprisonment.

THE prisoner was tried at the second Boolundshuhur sessions of 1825, for the murder of one Pertaub.

The chief evidence against the prisoner was furnished by his own confessions; from which it appeared, that the deceased had driven his cattle into the prisoner's field, and was himself plundering the grain; that the prisoner warned him off, in return for which the deceased abused him; and that this conduct irritating the prisoner, he struck the deceased several blows with a club. The transaction, he stated, took place at midnight; but from the evidence of the witnesses, who saw Pertaub just after he had receivedt he beating, it appeared to have taken place in the evening, long before dark. The deceased lived a month and twenty days after he had received the blows; but it was clearly in evidence, that he died from the effect of those blows.

In this case, the law officer of the Court of Circuit delivered a *futwa* of culpable homicide on strong suspicion, and declared the prisoner liable to *Deeut*. The Judge of Circuit differed from him, as he considered the case to be one of justifiable homicide, the only direct proof being the confession of the prisoner, who declared, that he found the deceased in the act of plundering his field, a practice

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however erroneously. The officiating chief Judge was of opinion, that considering the case as illegally committed, he should have called in another Judge of Circuit to second him in ordering the release of the prisoner without a *futwa*.

With regard to the course of proceeding to be observed in annulling a commitment, the officiating Judge (H. Shakespear,) observed, it occurred to him that, instead of referring the case to the Judges at the sudder station, (who under the provisions of clause 2, section 3, Regulation VI. 1818, are not competent to annul the Magistrate's order,) it would be better that a Judge of Circuit, seeing cause to annul a commitment, should make the reference direct to the Nizamut Adawlut. It had already, he added, been declared, that a Judge of Circuit singly has no power to quash a commitment, and that the present case sufficiently shewed the necessity of some general rule being laid down for the conduct of Judges of Circuit in such cases. It was agreed, however, that the sentence in the individual case should not be delayed on account of the above noticed difference of opinion, and that the point in question should be reserved for discussion at a full meeting of the Court. The question having been accordingly brought forward, and discussed at a full meeting, on the 3d of August 1826, it was determined, that, whenever a Judge of Circuit may be desirous of annulling the commitment of a Magistrate, either with respect to the whole or a part of the individuals included in the same commitment, as being irregular or illegal, he shall record his opinion to that effect, and refer the case for the final order of another Judge at the sudder station, who is bound to pass his opinion thereon, without any delay, so that the duties of the Circuit may not be impeded.

1826.
HOOLASA'S case.

in those provinces, he observed, very common; cattle in dry seasons being always fed in that manner by persons not having a store of dry fodder. He added, that if the prisoner's confession be received as true, he did not think that the case could be viewed in any light than that of justifiable homicide; and that, if it was not true, there was no proof against him but the hearsay evidence of the deceased's relations, in which no confidence could be placed.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of *Shibah Amud*, in having struck the deceased Pertaub on the head with a stick, the weight of which was unascertained, which blow caused his death, declared him liable to heavy *Deeut* and *Acoobut*.

By the Court. C. Smith, (second Judge.) "I do not see any thing sufficiently established to make it justifiable homicide; but adverting to the non-proof of murderous intent, I would treat it as culpable homicide, and confine the prisoner with labour for two years."

W. Leycester, (chief Judge.) "The prisoner is in my opinion entitled to his discharge. The *futwas* for the purpose of conviction take one part of the confession, and reject the other, which is not just; and though they attach weight to the evidence as to the account given by Pertaub, they pass over entirely the evidence as to the account given by the prisoner. If a thief will enter upon a man's field, and being discovered in the act of stealing the produce, attempt to escape, I do not know that any guilt can attach to the proprietor of the field for striking him with a stick: the thief is responsible for the consequences. I would acquit."

A. Ross, (fifth Judge.) "Hoolasa's own statement, I think, makes him guilty of culpable homicide. He admits that, he knew the person trespassing upon his field was Pertaub, and that he at once struck him on the head with a bludgeon, and inflicted a wound which caused death. Even had he not recognized the trespasser, and had believed him to be a thief, he should have endeavoured to secure him, if possible, without wounding him. The affair, moreover, happened in the evening before dark, as appears from the depositions of Hursahaee and Kurraroo, which renders the conduct of the prisoner less excusable than if it had happened in the darkness of night. On these grounds, I concur in the sentence proposed by the second Judge."

The prisoner was accordingly sentenced to be imprisoned with labour for two years.

MUNNOOA,
against
SHEOGHOOLAM.

1826.
Jan. 13th.
SHEOGHOOLAM'S case.

Charge—MURDER and THEFT.

The prisoner convicted of receiving property, knowing it had been obtained by theft, attended with murder, and sentenced to 14 years imprisonment; to convict of this offence it not being deemed necessary to prove that the person robbed, had possession of the property, up to the day of his death.

THE prisoner above named was charged in the calendar with the murder of Telokhee, the prosecutor's father, and theft of jewels to the amount of 100 rupees, 14 annas, on the 23d January 1825, and tried for that offence at the 2d sessions of that year for zillah Cawnpore. The statement of the prosecutor, as proved by the witnesses, was as follows. The prisoner and the deceased lived so close to each other as that their houses were divided but by a wall. The prisoner one day came to the place where some of the witnesses were resting themselves, and said Hindoo has told me, that Telokhee (the deceased) had mentioned to him, that he (Telokhee) had beheld in his house a figure with long limbs and a cap on his head; that he (Telokhee) could not tell whether the figure was a demon or a man; and that Hindoo enquired whether Telokhee recognized any person in what he saw, to which Telokhee replied in the negative. After relating this story, the prisoner proposed that the persons present should go and ascertain how the said Telokhee was; adding, that all the other inhabitants of Telokhee's house were abroad, his son having gone to a marriage procession, and his women to the worship of *Devee*. The party refused to go; but the prisoner compelled one of them, by name Soni, to accompany him; and while Soni stood outside at a few paces distant, the prisoner entered, opening Telokhee's door, which had been shut, and immediately called out that some one had hanged Telokhee. The body was described by the witnesses to the *Sooruthal*, or inquest, as without marks of violence, and laid upon the ground, with a broad piece of cloth tied tight round the neck. When the Darogha came, he remained till night taking examinations, sent most of the witnesses to the Thana, and carried along with himself the prisoner. In the morning all went forth from the Thana again, and the prisoner's shop being searched, only two earthen pots were brought out. The prisoner often desired during the search to be permitted to enter the shop likewise, and was as often denied permission: at length, notwithstanding the opposition given to his wishes, he entered the shop. Being observed to lean somewhat to one side on coming out, he was asked what he carried at his side. He answered, that it was only his copper money; but being seized by the arm, something fell to the ground, and, this being taken up, proved to be a purse containg the jewels of the deceased. A witness named Chootkeen deposed, that Hindoo on the day of the discovery of the dead body of Telokhee, told the witness, that Telokhee called him (Hindoo), and told him the story of the figure he had seen, exactly in the terms already described. This witness stated, he told the story to the prisoner; and Hindoo's own evidence exactly corresponded. On the subject

1826. SHEOGHOOLAM'S case.

of this conformity of the evidence with the prisoner's story, the Judge of Circuit observed it was very probable that this story was a concerted one between the prisoner and Hindoo, and that were this presumed, the association of Hindoo in the crime might be most violently presumed; but, it was also probable that the same absurd story, provided it be supposed it was really circulated by Telokhee himself having reached the prisoner's ears, might have suggested the murder and the robbery. He added, that there was evidence enough, in his opinion, to establish the guilt of the prisoner; but that he was singly engaged in the commission of the crime appeared more doubtful, as the deceased was described to be a strong man of fifty-five, and able to defend himself against the power of a single individual to strangle him.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of murdering the prosecutor's father, and taking his property, declared him liable to *Acoobut*, and even to death, for the crime.

By the Court. C. Smith, (second Judge.) "I see nothing sufficiently established against the prisoner, but that the property of another person was found in his possession, under circumstances which raise a violent presumption, that on receiving it, he knew it to have been obtained by theft, attended with murder: for this I would sentence him to 39 rattans, and 14 years imprisonment with labour in banishment."

W. Leycester, (chief Judge.) "I know not what to make of this case. We have no proof that Telokhee was murdered. It is only shewn that he was found dead. We have no proof that the jewels were stolen on the day Telokhee died, or on any other day of the same year, or any other year. That which might have been shewn is not shewn, viz. up to what period the women of Telokhee's house knew him to be in possession of the said jewels. If the evidence is to be believed, it is presumable that the prisoner did not commit the murder. It is said, that no answer was given when the prisoner and Soni went to Telokhee's house; that he then opened the door, and went in, and immediately returned, exclaiming that Telokhee was murdered. If this be so, and such is the evidence we have, Telokhee was dead before the prisoner went to his house. The prisoner is probably guilty of having property in his possession, knowing it to be stolen property; but until it is shewn that the property was stolen, or rendered presumable that the property was in his possession up to the time when the female part of the family quitted his house, I do not think we can convict him even of that. I would order that evidence to be taken."

A. Ross, (fifth Judge.) "In my opinion, the facts established in this case are more than sufficient to convict the prisoner of receiving property, knowing it to have been obtained by theft, attended by murder. I think they are almost sufficient to convict him of murder and theft. I see no reason to doubt that Telokhee was murdered. He was seen alone and well, a very short time before his dead body

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SHEOGHOOLAM'S case.

was found; and the prisoner, who was the person who first saw it, stated that there was a *dhotee* round the neck of the corpse, with which the deceased had been strangled. The prisoner was taken into custody almost immediately after, in consequence (as appears from the Darogha's report) of his shewing signs of confusion and alarm while the Darogha was examining the body of the deceased: and the finding on the prisoner, after he was taken into custody, the property of the deceased, and his attempt to hide it, raise a very strong presumption of his guilt. I would, therefore, as suggested by the chief Judge, postpone passing sentence on the prisoner, and call for evidence on the following points. 1st, Whether the property found on the prisoner was known to be in the house of Telokhee (the deceased) up to the day on which he was murdered. 2dly, Whether the prisoner was seen with a cap on his head on that day. 3dly, What were the circumstances which induced the Darogha to suspect, and take the prisoner into custody."

Further evidence having been taken, but not being satisfactory to the mind of the chief Judge, or, in his opinion, such as to warrant the sentence proposed, or more than four years imprisonment, on the charge of having property in his possession, knowing it to have been stolen; and the fifth Judge retaining his opinion as to the prisoner's guilt, concurred with the second Judge in opinion, as to the extent of the punishment which should be awarded; and a sentence of 14 years imprisonment, in banishment, and 39 stripes of the rattan, was passed upon the prisoner accordingly.

GOVERNMENT, *against* PUHAREE.

1826.
Jan. 16th.
PUHAREE'S case.

Charge—CRUELTY.

The prisoner convicted of blinding his wife with a hot iron: sentenced to fourteen years imprisonment withlabour.

THE prisoner Puharee was charged with blinding the eyes of Dhun Beebee, his own wife, by the application of a hot iron, and tried for that offence at the November sessions of 1825, for the suburbs of Calcutta. The first witness Musst. Dhun Beebee, the wife of the prisoner Puharee, deposed, that in consequence of his beating her, she left his house, and went to the house of her parents, whence the prisoner fetched her back three days afterwards, and upon their return home, he tied her hands and feet, and having heated an iron instrument, commonly used for the purpose of cleaning hooka snakes, he threw her down, sat upon her breast, and applied the instrument in question to her eyes, and thereby deprived her of her sight. She further stated, that this wanton act of cruelty was suggested to the prisoner by his brother Haroo, as the means of preventing her (the witness) from again leaving her husband's house; and that Musst.

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PUHAREE'S case.

Molaemee, the mother of the prisoner, held her by the hair of the head, during the time the prisoner was applying the hot iron to her eyes. Musst. Mihree, the wife of Haroo, the prisoner's brother, corroborated the statement of the preceding witness in every particular, as far as it implicated the prisoner; but deposed, that Molaemee, the mother, and Haroo the brother of the prisoner, were not present at the time the transaction took place. The other witnesses merely deposed to having heard of the circumstances detailed by the preceding witnesses. The prisoner pleaded not guilty.

The *futwa* given by the law officer of the Court of Circuit convicted the prisoner on violent presumption of the charge, and declared him liable to discretionary punishment by *Tuzeer*; and in answer to further questions from the Court, declared, that had the prisoner Puharee been convicted on full legal proof, he would have been liable to the penalty of *Deeut*, *Kissas* being barred in consequence of one of the parties being a female.

In referring this case to the Nizamut Adawlut, the Judge of Circuit observed: "Musst. Dhun Beebee is completely blind, without the possibility of recovering her sight, the pupils of both eyes having been totally destroyed; and as I conceive the charge to be fully established against the prisoner Puharee, and deem him an object of a more severe punishmeut than I am authorized to award, I beg leave to transmit the case for the final decision of the superior Court. I beg leave to add, that Haroo and Musst. Molaemee stood committed in this trial; and that, as I concurred in the *futwa* of the law officer acquitting them, the customary warrant was issued for their release.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Puharee Moosulmaun of depriving his wife Dhun Beebee of her sight, by the application of a hot iron, after having tied her hands and feet, declared him liable to *Acoobut* for the crime.

The Court, (present C. Smith, second Judge,) concurring in the *futwa*, and adverting to all the circumstances of the case, sentenced the prisoner Puharee to be imprisoned with hard labour for the term of 14 years. The second Judge, however, as appeared from a note of his, recorded on the proceedings, was not without some leaning to thinking the prisoner a fit object for a sentence of perpetual imprisonment.

GOVERNMENT,
against
TEEPOO PAUGUL.

1826.
Jan. 14th.
TEEPOO PAUGUL'S case.

Charge—TREASON and REBELLION.

The prisoner being charged with rebellion and high treason against the state, was convicted of seditious practices, and disturbing the peace; and sentenced for those offences, under all the circumstances of the case, to imprisonment with labour for the term of five years.

THE prisoner Teepoo Paugul, charged by the acting Magistrate of Mymensingh with entertaining the design of becoming king of Pergunna Sherepore, with exciting the *Paugul* sect, composed of various castes and creeds, to form themselves into an united body, under the denomination of *Paugul Punthee;* with prohibiting the *ryots* from paying their rents to the Zumeendars; with preventing the *ryots* employed by the Zumeendars from working at the new military road, making by orders of the Magistrate, to facilitate the march of troops; with being the chief instigator of all the disturbances in the above-named Pergunna; with illegally assembling the sect of *Pauguls* in arms, murdering and wounding the officers of police and servants of the Zumeendars; with instigating the *Paugul* sect to attack various villages in Pergunna Sherepore, with the desire of obtaining his sovereignty, and so liberating the *ryots* from the sway of the Company's Government and the Zumeendars; with collecting money from the *ryots*, under the denomination of *Nuzzur*, *Shernee*, and *Khizana;* with appointing several *Sirdars* to exercise authority over the *ryots*, and with plundering the supplies collected for the troops at Hulloa Ghaut, and taking away the revenue: such crimes having been perpetrated between the months of October, 1824, or Kartic, 1231, B. S. and March, 1825, corresponding with Chyt, 1231, B. S. The origin of these excesses was thus described by Mr. Morrieson, the officiating Judge of Circuit, in his letter of reference accompanying the trial of other prisoners implicated in the same disturbances.

"Sherepore is the extreme Pergunna of the Mymensing district, and is bounded on the west and south by the great Burrampooter river: on the south and east by the Burrampooter, the Pergunnas Allapsing and Soosong, and north by the Soosong and Curreebarry hills, adjoining those of zillah Rungpore, which are inhabited by the uncivilized Garrows, in consideration of whose peculiar customs, rights, and language, Government was pleased to exempt them from the general Regulations, and establish for them the special rules laid down in Regulation X. of 1822. The belt of country uniting the plain of Sherepore with the foot of the Curreebarry hills, and which is designated Gird Garrow, or the Doon, is contested as hereditary property between the low and high-landers, and proves a constant scene of opposition, oppression, and contest. In 1792-3, this tract of country was, by the statement of the Collector, included in the Sherepore Pergunna, and the perpetual settlement concluded on a rental of 12 rupees yearly. It now yields to the Zumeendars 20,000 rupees *per annum.*

It appears, that about 50 years ago, a Moosulmaun Fakeer, named Kureem, seeing the corrupt state of the principles of the people inha-

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TEEPOO PAUGUL'S case.

biting the Doon, and the borders of Sherepoor and Soosong, set himself up as a reformer and soothsayer. The new creed he made choice of, was that of a Deist, and his discipline was adapted to the habits of the people he aimed at making his converts. In time he gained proselytes, and obtained permission from the Rajah of Soosong to take up his abode in the village of Seterkandee, where his followers erected a habitation for him, and supported him and his family by their free gifts and offerings. From the novelty of the doctrines and discipline of this sect, its head and members were by the neighbours styled *Pauguls*, and hence the *Paugul Punthee* association of Sherepore. Kureem *Paugul* sent forth his son Teepoo *Paugul* to teach and make converts. He did so successfully, and those proselytes became his brethren; and hence the term *Bhaee* and *Bhaee Sahib*. As the *Pauguls* increased, so did the riches of their priest. Kureem died about twelve years ago, respected as a good and pious man, and a soothsayer. He was succeeded by his son Teepoo, who became head of the sect, protected his mother, and retained the old establishment. The old mother having the more experience, became the soothsayer and priestess; and hence the origin of the term *Ma Sahiba*, or the lady mother. Teepoo *Paugul* was speedily seduced, and gradually imbibed the vice of the members of the sect, who were composed of the corrupted Hill people, and the worst of the Hindoos and Moohummudans, comprising the castes of the Hujung, Hattree, Dallo, Bonaee, Bunsee, and Dye; and as is reported and currently believed, assumed the lead in all their excesses and crimes. Teepoo so well suited his doctrines to the wants and desires of these people, that he, with the aid of a suitable discipline, soon worked upon the superstitious minds of his hearers, and gained so complete an ascendancy over them, as to get them to believe and act just as he found it expedient to guide and dictate to them. What the real character of this man is, and what the nature of his secular doctrines are, remains to be shown. He stands committed in the supplementary calendar, with entertaining the ambitious design of becoming *Badshah* of Purgunna Sherepore, and with various other offences. That he has before been accused of crimes, and once stood his trial for murder, the records of the Court show: and this much may be considered as clearly established, that many individuals of the *Paugul* sect declared themselves appointed *sirdars* and *Ohdadars* by Teepoo *Paugul*, to expedite his sway, and hasten the period of his becoming *Badshah*; and in his name gave it out, that the *ryots* would enjoy the whole produce of their lands for three years, during which period no rent should be demanded from them; that *baigaree* labour should be entirely abolished, and that a permanent settlement should be made, at the fixed rate of four annas for each *koor* of cultivated lands, in place of the three and four rupees they paid to the Zumeendars. And of this I conceive there can be no doubt, that many of the most dissatisfied of the *ryots*, particularly some of the more daring, independant, and wily of the Hatries, Hajungs, and Dyes conceived the idea, that Teepoo and his sect might be made the means of bringing to light their intolerable grievances; and to effect this

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end, they had recourse to flattery and hypocrisy, and by a concerted perseverance at length persuaded Teepoo, that he and his numerous sect had much more power and influence over the minds of the *ryots* in Sherepore than they seemed aware of; and as none could compare with them in hidden knowledge, nor equal their high priest in his miraculous powers of *Paugulism*, so none was more deserving of being lord of the revenues, and ruler of the Pergunna; and that under his auspicious guidance, a reform congenial to the wishes of the *ryots* would be effected, and the whole population relieved from those oppressive burdens which ruined their happiness and prosperity. There can be as little doubt, that the wishes of the two parties proving congenial, they coalesced, and formed a fountain of vice, from which proceeded those streams of guilt and crime which have inundated the Pergunna.

"Juggut Jeewun was progenitor of the present proprietors, and sole Zumeendar of Pergunna Sherepore. He died, leaving four sons, who with their heirs, divided the produce of the estate into certain shares, the lands being held in joint tenancy. Disputes arising for the produce and possession of certain lands, quarrels ensued, and a suit was instituted for a legal division of rights. In the year 1771, a decree was given, awarding to the heirs of the 1st and 2d sons a nine anna share, and to the 3d and 4th sons a seven anna share, of the profits of the *zumindaree*. On fresh disputes arising between the holders of the nine anna share, a private agreement was entered into, dividing that share into two shares of four and a half each. Disputes arising between the seven anna shareholders, they also were forced to have recourse to the law; and in 1790, a decree was passed by the Dacca Court, founded on an agreement between the parties, stipulating that Bheem Narain, one of them, should undertake the measurement of the whole seven anna share, and obtain an equitable division, in the proportions of a four anna share to himself, and of three annas to the others; but in the event of his failing to gain a division on a measurement of the lands, he was to forfeit the half anna share given up to him, and each party were to remain in possession of the lands jointly on the equal shares of its produce, that is to say, each three and a half annas. The Collector was forthwith applied to, to make the division, and the same was commenced on accordingly. In 1792-3, the perpetual settlement was concluded for the proportional shares of nine, four, and three annas. New disputes led to a new suit, and in 1803, the Sudder Dewanny Adawlut decreed possession of a 1-10 anna share, out of the four anna portion from the seven anna division. At this period, a military force was sent out to quell the disturbances. Renewed disputes led to another suit; and on the 15th of January 1808, the Sudder Court decreed possession of a three and half anna share of the nine anna division, directing a proportion of the net profits to be paid for the period during which the holder of the decree had been kept out of possession. The execution of the decree met with such violent opposition, as to cause riots and disturbances. These led to an order for attachment by the Sudder Court. The disturbances

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increased to such a height, as rendered it necessary to send out a large military force, which after the loss of many lives, and the destruction of seventy-six villages, succeeded in apprehending many of the insurgents, and in restoring tranquillity. The Zumeendars committed for trial were all acquitted. By order of the Sudder Court, under date the 1st of August 1808, an Ameen was deputed by the Collector to make a regular measurement and equitable partition of the nine anna division, and give possession on the decreed three and a half anna portion. In 1816, a decree was given by the Dacca Court for possession of a one share out of the three and half, from the nine anna division, and in consequence of the Sudder Court having released the estate from attachment, the Collector found it requisite to apply to the zillah Judge to reattach the nine anna division, under the provisions of section 26, Regulation V. of 1812. Between the years 1808 and 1820, three successive Registers of the zillah were kept on deputation, to execute the decrees, and restore tranquillity to this unsettled Pergunna. On the 14th of August 1816, the Judge of the zillah issued a proclamation, strictly enjoining the Zumeendars to consolidate the *ussul* rent of the lands, with the different *mathots* and *abwabs*, in conformity to Regulation VIII. of 1793, and again on the 17th of September 1818, the Register stationed in Sherepore issued a similar proclamation, and sent separate *perwannas* to each of the Sherepore Zumeendars, ordering them immediately to comply with the provisions of Regulation VIII. of 1793. Between the years 1817 and 1820, the different Collectors had given possession to several of the sharers, upon several *mahals* and villages of the nine anna division, upon what is officially termed a *Sehaum Butwarra*, all of which had been approved of by the Board of Revenue. The remaining undivided *mahals* and villages of the nine anna division still continuing under the *Koork Surburahkar*; and the *Butwarra* Ameen and his establishment still continuing their measurement. In 1821, the Sudder Court gave a decree for possession on a one and half anna, out of the three anna share of the seven anna division to a widow, for the limited period of her lifetime. In 1820, at the request of the Zumeendars, made through the *Koork Suzawul* to the zillah Judge, that officer authorized leases to be given on a period of six years, of part of that portion of the undivided nine anna division, placed under the management of the *Koork Suzawul*. The same was carried into immediate effect. In 1822, two new leases were granted, making in all nine, the latter for a period of seven years. Again in 1822, the decreeholders of the three and half anna share petitioned the Court to allow their interests in the undivided portion of the estate to be farmed out, as they were suffering great loss by the mismanagement of the *Koork Surburahkar*. The Judge acquiesced, and proclaimed that the joint *mahals* which were not yet divided, and then under management of the *Koork Suzawul*, would be farmed out to the highest bidder, in two leases from the Court. The same was done accordingly, and, as appears by the Judge's proceedings to my address, under date the 10th September 1825, without any of the Zumindaree papers having been exhibited, by which

the gross or net annual rents, or the rights and privileges of the *ryots* might be ascertained. After some time, the sureties begged to be allowed to withdraw their security, and their prayer was granted. Lawsuits and appeals followed, and the whole ended in the leases being cancelled. Again, however, in 1824, a similar proclamation, under date the 19th of February, was issued, and two new leases given out by the Judge, on the same terms, one for five, and the other for seven years. These were followed by new subordinate moofussil arrangements, all tending to reproduce the very effect, to guard against which the Zumeendars had been dispossessed, and the *Koork Suzawul* deputed. Shortly after this, new disputes, and suits, and appeals ensued, and continue to the present day. On this nine anna division alone, there is a manager on the part of the Court, whose qualifications and duties are declared in section 26, Regulation V. of 1812, and considering the length of time this office had existed, I expected the zumeendaree papers, prepared under his inspection, would be complete and correct; and under this impression, I requested the Court to favour me with information on the subject of the universal complaints of the *ryots* against the landholders and their representatives, for exacting large sums of money from them, under the designation of *Muthot*, *Abwab*, and *Khurcha*, and to state whether the original rents of the land had been consolidated with the arbitrary cesses, in conformity to Regulation VIII. of 1793, and to explain the nature of the leases granted by the Judge; and I took the liberty of suggesting, that the summary suits would prove a satisfactory source to ascertain the fact of excessive demands from the *ryots*. In answer, I received the information related above, regarding the leases, and that in consequence of there being no papers in Court relative to the estate under attachment, no reply could be given from that source as to the collections made from the *ryots*; that on an inspection of the summary suits, it clearly appeared, that the Zumeendars and their representatives sued for, and attached for arrears of *Muthot*, over and above the rents of the *ryots*; and that it appeared the rule enjoined by Regulation VIII. of 1793 had never been carried into effect, nor were the agreements entered into between the Zumeendars and *ryots* in conformity thereto; and that up to the present year, though great difference of opinion had existed among the former Judges, and the Collectors, and Moonsiffs, and Sudder Ameens, as to the equity of the demands, and to the amount to be awarded, yet in regular as well as summary suits, these officers had granted decrees upholding the system, confirming the *putwarree* papers and *pottahs*, and attesting the *kubooleuts* promising to pay, over and above the specified amount of rent, any sum that should be demanded for *Muthot*; the term of the *Muthots* varying in different *kubooleuts*, viz. *Shadee*, *Ghumee*, *Purrubee*, *Pooja*, *Girdawuree*, *Purgunatee Khurcha*, &c. whenever, and to whatever extent demanded. The Court also intimates, that the manager is in possession of the decreeholder's right, he having refused to take possession of the *Sehaum Butwarra* share offered by the Collector, objecting to its equity, and claiming his full right, as

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ordered by the Sudder Court. The Judge also informs me, that 4627 *ryots*, and subsequently 568 more, in all 5195 from the Perguunnas of Sherepore and Allapsing, had presented petitions against the system of exorbitant rents, and *Muthots*, and expenses for military roads and supplies, &c. &c. &c. and the increased demands on them for rents, since the year 1227, (1821,) the æra of the appointment of *Canongoes*; that the Zumeendars refuse to bring forward their village papers, from an apprehension of the injurious consequences resulting to them from their production; that the points at issue between the Zumeendars and *ryots* can only be proved satisfactorily by documents, to keep back which there is a concerted plan between the Zumeendars, their agents, and the Government officers, who refuse information, and give vague and evasive answers when applied to, and that the *Putwarries* abscond and evade process. From the revenue department, on this nine anna division, many *Koork Ameens* have been deputed since 1808, to give possession in execution of decrees. Both on this nine anna and on the seven anna division, several *Butwarra Ameens* have been deputed to make an equitable partition of the lands, in proportion of the shares due to the different proprietors. The Court of Wards act in behalf of an infant sharer; and there are the *Canongoes* and *Putwarries*, whose papers are under the immediate superintendance of the Collector. From these sources, I hoped to receive that information not to be got from the civil Court, and addressed the Collector accordingly. By that officer I was informed, in reply, that his office did not afford the means of information I required; that as the several *Ameens*, *Koork* and *Butwarra*, had not deposited their official papers in his *cutcherry*, and the *Ameen* now on the estate effecting a division by measurement, had not furnished any papers, shewing the rental of the *Mouzas* measured, he could not say how the collections were made; that he could not inform me of the general tenor or conditions of the *pottahs* and *kubooleuts*, as there were none in his *cutcherry* records; that no direct answer could be given to the question regarding the consolidation of the *ussul* with the *Abwab* and *Muthot Jummas*; as the very old papers of 1789 clearly showed them to be separate, and the *Muthots* numerous; and the more recent papers from which the village rates might have been ascertained, were all in confusion, and wormeaten; that some Zumeendaree papers showed a consolidation of some of the *Muthots* with the *ussul Jumma*, and that the *Canongoe's* papers showed, that besides the rents of the *ryots*, there was an arbitrary exaction collected for *shadee* and *ghumee*, but to what extent did not appear; that the Zumeendars and *Putwarries* unitedly offer every opposition to the production of their village papers; that he had been obliged to apply to the Magistrate to apprehend the refractory *Putwarries*; and that the Zumeendars in general refuse giving the names of their *Putwarries*; that of those who have complied he (the Collector) believes three-fourths of the names given in to be *furzee*, or fictitious; and lastly, that the possession which had been given to the other sharers upon certain *mahals* and villages, had been effected on a *Sehaum Butwarra*, viz. a private division formed without any reference to the *Mou-*

zawarree records, with, or in the presence of, the *Putwarries* of the Pergunna, and concluded on the accounts (showing the annual rental of the *Mouzas* comprised therein) given into the Collector's office by the Zumeendars in possession.

"After the above detail of the distracted state of this unfortunate Pergunna, it becomes a point of the first importance to ascertain the true cause of so long continued a series of strife, dissatisfaction, and turbulence, and for the sake of humanity, equity, and policy, to apply with as little delay as possible, an effectual remedy which will ensure a cure, and prevent a recurrence. The remedy is foreign to the proceedings of this Court; the cause is intimately connected with it, and appears to my mind, after the above narration, (the materials of which I have taken much pains to obtain, and believe them to be correct,) not to be difficult of solution. I shall shortly state my opinion of the causes as follows. That Purgunna Sherepore is distant from the seat of authority; is a boundary estate, and bordering on the Curreebarry hills; that the greater proportion of the lands in the Pergunna are uncultivated and waste; that its inhabitants have peculiar ideas, customs, and habits; that its extent and contents are not known; that its produce varies with the management; that its management is divided amongst many sharers, none of whom know the extent of their own rights, and are constantly encroaching upon that of their neighbours; that the lands never having been measured, defined, or divided, the customary partition of interests has been a proportionate share of the produce of the cultivated lands, at times specifying certain villages as a guarantee for the amount, and at other times certain *ryots* keeping the portions in joint tenancy; that such a division leads them to covet each other's property, and engenders a spirit of envy, chicane, hatred and malice amongst the sharers, who, to overreach the object of their dislike, and attain their own immediate desires, have recourse to the corruption of the *ryots*, and every other resource condemned by the laws of civilized society; that the Zumeendars have adhered to the old custom of collecting their revenues from the *ryots*, as they were wont to do prior to 1792-3, and have never conformed to the law laid down in section 54, Regulation VIII. of 1793, directing the consolidation of the *Abwab* and *Muthots*, with the original land rent, so as to establish a known rate of *jumma* for the different lands in each village: hence a continuance of that very oppression upon the *ryots*, to put an effectual stop to which was the express desire of Government in 1793; that there being no settled *jumma*, there would be no *pottahs* and *kubooleuts*, in conformity to section 58, Regulation VIII. of 1793, and hence the *pottahs* and *kubooleuts* of the present day, when they exist, and the whole of the *putwarees* papers, and civil and criminal suits shew the collections of *Muthots*, and the same countenanced by the revenue and judicial authorities; that the same uncertainty in payments has prevented the observance of section 63, of the same Regulation, directing receipts to be given for all revenue payments, and hence the *ryot* is kept at the complete mercy of the unfeeling Zumeendar; that the fundamental rules laid down in section

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62 and 67, of Regulation VIII. of 1793, have been allowed to be a dead letter; and with them the protection of the person and property of the *ryot* and the rights of the Zumeendars and Talookdars; that the several *Sehaum Butwarras* made by the different Collectors, far from tending to quiet the disputants, have created new animosities; and the Collector intimates to me, in his public proceedings, that owing to the disputes between the parties, and their dissatisfaction with the shares allotted them, the partitions of neither the nine, the four, nor the three anna shares have yet been completed, and still remain a subject of contention in his office. So fully satisfied is one of the parties of the injustice of the share allotted him, that he has entered a civil suit against the opposite parties, including the Collector; and it appears to me, the partitions made and approved of by the Board are premature, as a large portion of the estate is still joint, and held under attachment, and not yet ready for division, a measurement being still in progress; that the Canongoes receive whatever papers the Zumeendars send to them, without any investigation as to their truth or correctness, or comparing them with the anterior year's village papers; and these papers, being considered official, are appealed to by the Zumeendars against the *ryots*, who have no counter documents to produce; that these papers were made up for the purpose of being given to the Canongoes, and the rents of *ryots* inserted arbitrarily, without their knowledge or consent; and that many *Abwabs* and *Muthots* have been included, which the *ryots* refuse to acknowledge; and that the civil Court, when it came to the determination, that the management of the *Koork Surburakar* could be dispensed with, would have acted properly in relieving the Zumeendars from the expence of that establishment, and allowing the proprietors to resume charge, and make their own arrangements, instead of authorizing the manager to give out a number of leases, and creating two Court lessees, thereby giving up the undefined, and undivided, and contested lands into the possession of strangers, and persons having no future interests in the estate, regardless of the rights and welfare of the *ryots*, and only eager to extract the greatest sum of money possible from their temporary possession. These, in my judgment, form the primary causes of the discontent, the disagreement, and the turbulent disposition of the inhabitants of the Pergunna Sherepore, and of Tuppah Saut Sicca, adjoining the same, but belonging to the Pergunna Allapsing.

"Besides the above remote, there are the following immediate causes, which proved too much for the people to bear, and led to the consultation of soothsayers, and, on the counsel of Teepoo *Paugul*, to seditious meetings, disturbances, and insurrections. In October 1823, the Magistrate, in consequence of the Burmese war, was desired to be on the look-out for, and intercept all Burmese boats traversing the Burrampooter river. In March 1824, the Magistrate was first applied to by the Dacca Commissariat, for supplies for the troops in, and proceeding to, Assam, inclusive of large demands for boats to transport the same; and throughout this month up to the end of July, constant orders were received by the Magistrate, which were

repeated by that officer direct to the Zumeendars, who in their turn repeated them to their *Talookdars, Ijaradars* and *ryots*, through whom the orders were executed, and the materials supplied. On the 6th of September, the Sherepore Zumeendars were ordered by the Magistrate to provide their share, in concert with other Zumeendars, of the requisite materials, and forward them to Jumalpore, for the repairs of the military lines there. They were at the same time directed to send supplies of grain, &c. for the use of the troops there. On the 16th, the Sherepore Zumeendars received an order from the Magistrate to make a new military road from the Jumalpore Ghaut, on the Burrumpooter, throughout Pergunna Sherepore, to the borders of Pergunna Soosong and Allapsing towards Sylhet. On the 21st of November 1824, the Magistrate received the first intimation of the sect of *Pauguls*, and the dissatisfied *ryots* becoming troublesome and turbulent. On the 24th, Teepoo *Paugul* was ordered to be apprehended. About this time the report became prevalent, that the British Government was drawing to a close, and that the power of the Zumeendars was on the decline, when *Muthots, Khurcha*, and *Baigarées* should no more be heard of. That the great *Paugul* Teepoo Fakeer, was on the point of being proclaimed *Badshah*, and would make a settlement on a reduced and favourable scale for Pergunnah Sherepore. About this time, also, the Zumeendars commenced realizing from their *Talookdars, Ijaradars*, and *ryots*, a tax called "*khurcha russudi pultun*," to defray their alleged losses and expenses in supplying the articles ordered for the troops. On the 4th of December, the Darogha reports, that the *Hattries* and other *ryots* refuse to work for the Zumeendars, saying they know no other authority but Teepoo *Paugul*; and on the 5th, the Zumeendars report, that the *Hattries* and *Pauguls* refuse to work, and they cannot execute the works preparing for the arrival of the troops; that the *Pauguls* threaten them with vengeance, and that they therefore request the protection and aid of the police. On this the Magistrate orders the Darogha to cause the *Hattries* to work for the Zumeendars. On the 7th, Teepoo *Paugul* is apprehended in Nusseerabad, and on the 9th is ordered to be liberated on a *Moochulka* of 25 rupees, to remain in attendance. On the 11th and 12th, the Sherepore Zumeendars were ordered to abandon the new road, and remove the supplies collected there, and convey them for the use of the troops on their march from Rungpore, and aid in preparing ferry-boats for crossing 5000 oxen, and 500 camels. On the 13th a proclamation issued, directing the *ryots* not to commit excess, but come and complain of their grievances; and on the same date, that Teepoo was found to have absconded, a proclamation was ordered to be issued for his apprehension. On the 14th, the Darogha reports the *ryots* joining with the *Pauguls* in acts of violence and oppression. Up to the end of this month the Zumeendars continue collecting the tax to cover their losses and expenses. Up to the 3d of January 1825, 6000 bullocks with 600 drivers, 1000 camels with 1000 drivers, 1000 sepoys and 600 cavalry complete, and 1000 horses with syces and followers, had passed through Jumalpore. On the 6th, the Darogha reports the *Pauguls* collecting in different parts of the Pergunna in large

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armed bodies. On the 8th, a guard of sepoys is ordered out to Sherepore to support and aid the police, in protecting the threatened lives, persons, and property of the Sherepore Zumeendars. On this date, Teepoo *Paugul* is again apprehended in Nusseerabad, and confined in jail. On the 9th, the Darogha reports the commencement of disturbances in the neighbourhood; that the people refuse to work for the Zumeendars, and say, their caste is disgraced by working on the roads, and cutting grass for the horses, &c.; that the control of the police is contested; the authority of the Zumeendars disowned, and all business at a stand. On the 16th, the *Pauguls* are reported roaming about, and collecting in large armed bodies, forbidding the payment of rents to the Zumeendars, and exacting money as *sullamee* and *shernee* in the name of Teepoo *Paugul, Bhaee Sahib*, and his mother *Ma Sahiba*. On the 19th of January, the *Pauguls*, having assembled to the number of 6 or 700 armed men, at Chyton Kella and Maddar Kullee, threaten an attack upon the houses of the Zumeendars of Sherepore. They seize six of the Zumeendaree Burkundazes, and murder two on the spot, and carry off four, who have never since been heard of. This case forms No. 5 of the calendar. On this same date, a large body of ryots attend at the Magistrate's *Cutcherry*, to complain that they can no longer endure the oppressive rents, endless exactions, and unrequited labour forced from them by the Zumeendars. Their complaints are received, and referred to the Darogha and Zumeendars for explanation. On the 21st, more sepoys are ordered out to Sherepore. On the 26th, the Magistrate ordered Teepoo's irons to be knocked off; and his associate brethren to be liberated from jail. The whole of the *Pauguls* declared their innocence, and assert the whole cause of the disturbances to originate in the illegal and excessive exactions from the *ryots* by the Zumeendars, Talookdars, &c. On the 27th, the Daroghas of Sherepore and Ghowsgong are instructed to proclaim to the *ryots*, not to pay more rents to the Zumeendars than usual, until their complaints are enquired into. Up to this date, 8000 more bullocks, with 800 drivers and followers, had passed through Jumalpore; and throughout the month, the Zumeendars continue to realize the tax of "*Khurcha-i-Russudi Pultun.*" On the 2d of February 1825, 200 horses and 55 camels, with their riders, and attendants, and followers, pass through Jumalpore. The Zumeendars continue collecting the tax, to make good which, the *Talookdars* and *Ijaradars* press the *ryots*. On the 6th, a large armed body of *Pauguls* attack, seize, and carry off Bhugwan Singh, Burkundaz of the Sherepore Zumeendars, who had in his possession 25 rupees, revenue collected from the village of Buksha Byd, a party of whom stand charged with the murder of Bhugwan Singh, in No. 8 of the calendar. On the 14th, the Darogha reports, that on the arrival of the liberated prisoners, (brethren to Teepoo *Paugul*,) the whole sect proclaim Teepoo *Bhaee Sahib* to be lord of the treasure and revenues, and that through his miraculous power his own and the fetters of all the brethren in jail dropped off from their bodies. On the 17th, Teepoo's mother's influence is reported to be all powerful, since her son's im-

prisonment. Orders are therefore issued for her apprehension. On the 25th, the Sherepore Darogha calls out a *posse comitatus*, which divides the ryots into the two parties of "*The Company ka Luhur* and the *Paugul ka Luhur*." On the 26th of February, Mr. C. Smith, the Judge and Magistrate, is relieved by Mr. W. Dampier, acting Judge and Magistrate. On the 28th, a proclamation is issued by the acting Magistrate, exhorting the *ryots* of Sherepore to desist from disturbance and outrage, and to attend and lay their complaints before him on his arrival at Sherepore, and strictly forbidding all illegal meetings, assemblies, and parading about armed, or in bodies, and enjoining obedience on pain of death. March 3d, the acting Magistrate arrives at Sherepore Thana, with a military guard. On the same day, the *Pauguls* assemble in a large armed body of about 200 men, and attack the house of Mukoora, Mundul of Dahalleea, ten miles from the Thana, and making a forcible entry, seize and carry off Needa Ghazee, a police Burkundaz, and two other temporary police officers, (*Muzkooree Peadahs,*) and two prisoners under their charge; of which crime a party of them stand charged in No. 4 of the calendar. On the 12th of March, the acting Magistrate pursues and surprises the *Pauguls* by a forced nocturnal march, and rescues the police officers. On the 16th, the Darogha of Thana Ghowsgong, with a party of police officers and followers, proceeded in the execution of their duty to Banderkhatta, to apprehend Dookoo Joardar *Paugul*, and Sirdar of one of the *Paugul* parties. On the approach of the police, a large body of armed *Pauguls* suddenly attacked the Darogha, wounded him severely, and two others, with stones, pikes, and clubs, and killed three of his men. After shooting two, and severely wounding several of the *Pauguls*, the police were driven back, and forced to abandon the field. Dookoo Joardar, and others of the rioters were subsequently apprehended and committed in No. 7 of the calendar. On this date also, Teepoo's mother was lodged in jail. The Collector was this day also directed by the acting Magistrate to take upon himself the duties laid down in Regulation XI. of 1806, &c. relative to the supplies and other preparations required for troops and public cattle passing through the district. On the 26th of March, the acting Magistrate left Sherepore, and returned to Nusseerabad, since which period no further outrages have been committed in that Pergunna.

On the subject of the particular case referred, the officiating Judge delivered his opinion in the following terms. "By the evidence of the Sherepore Zumeendars Brijnaut Chowdree, Kirteechurn, Kishoon Kishore, Ramnursing, guardian to a minor Zumeendar, Rammohun and Sham Chunder, guardians to another minor Zumeendar, Ramchunder Zumeendar, Ramdoolal Talookdar, Kasheekant Talookdar, Gopal Kishoon, Bydenat Kur Talookdar, Kewul Kishen Talookdar, Bhowanee Shunker Talookdar, Hurreepurshad Talookdar, Kishoon Chunder Talookdar, and Kallee Kinker Talookdar, none of whom personally knew the prisoner, but all of whom had more or less suffered from his criminal proceedings, it was fully established, that the prisoner bore the notorious character of being an

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apostate and outcast Moohummudan, professing a new belief established by his father, styled *Paugul Punthee*, an impostor and pretended soothsayer, a wicked and designing knave, who was a beggar, and now would be a king, a pretender to the sovereignty of Pergunna Sherepore, and the planner of a criminal scheme, and promoter of a seditious society of the *Paugul* brethren, from amongst whom were chosen popular leaders and subordinate officers, who were commissioned and deputed for the purpose of inveigling the *ryots* of Sherepore to embrace their *Paugul* principles, and of exciting the whole to all those criminal acts of rebellion, attended with aggravated scenes of cruelty, oppression, robbery, wounding, and murder, which have been proved to have been perpetrated in the trials already transmitted to the Sudder Court; and of having personally engaged in the further acts of criminality detailed and proved by other witnesses as follows.

1st. Having in Kartic last, corresponding with October 1824, visited Hilsa Ghaut, in Sherepore, in person, on board of a private pleasure boat, attended by about twenty-five men of his own sect, and there summoning, by Oorjoon his slave, the *ryots* who were working at, and making the road, under orders from the Magistrate, for the marching of troops and public cattle, and conveyance of military stores, and informing individuals, and instructing whole groups of *ryots* who flocked to see and hear the counsel of the great Fakeer Teepoo *Paugul Bhaee Sahib*, that it was not proper in them to be working as *baigars* on the road, neither was it proper for them to be paying such high rents to the Zumeendars, and such sums in cesses; that they ought to unite, and turn out the servants of the Zumeendars from their villages, as neither the present Zumeendars nor the Government would continue; that he (Teepoo *Paugul*) was shortly to become their king (*Badshah*), when he would rule them with lenity and equity, exacting the small rent of four annas from each *koor* of land cultivated, and annul all *baigaree* work. That many of the *ryots* presented the prisoner with offerings of milk and plantains, and promising obedience to him, left off their work on the road, and the payment of their rents to their Zumeendars. All of which are substantiated by the witnesses Kossaee, Ramanat, Rammohun, Bhowanee, Mohubboo, Toofanoo, Monee Khan, Sheikh Janoo, Kumaloodeen, Kamoo, Sunassee Singh, Rammohun Deeb, Sheikh Bassir, and others.

2dly. Having left off all the good practices of his father, and betaken himself to committing acts of cruelty and oppression on the *ryots* and people in his neighbourhood, by confining them in stocks, levying fines on them; keeping arms in his house, entertaining an establishment of ten or twelve armed Burkundazes, and several boats, on which he goes in style with his armed servants, and extorts charity, pretending to be a holy Fakeer, and holding out that he should shortly become *Badshah* of Sherepore, thereby keeping up a constant intercourse with the *ryots* of Sherepore, for whose accommodation he had erected houses at his residence Shunkerpore, had established a new market or *haut* styled Manickgunge, (having named it after

his favourite concubine Manick Chand,) and had given orders for the erection of new offices under the title of *Badshahee cutcheree* of Teepoo *Bhaee Sahib*; having collected rent from the Sherepore *ryots*, at the rate of four annas each *koor*, and having received from these deluded people presents as regal offerings: all of which is proved by the witnesses Gopal Gope, Ramkishob Chiragee, and Sheebram, who himself was confined by the prisoner two years ago in those stocks, now in Court, for a period of five days, and a bond extorted from him for 27 rupees; as well as Kinker, who three years ago, was also confined in the stocks by the prisoner for one day and night, and by another Kinker and Sheikh Lackoos, who swear that the attachment of the *ryots* to the prisoner was such, and their confidence in his predictions and miraculous powers so great, that, after his apprehension, the deluded people flocked in greater numbers to his residence, and gave into the hands of his Dewan and Manickchand, his concubine, what they had brought for the prisoner.

3dly. Having excited his sirdars Bukshoo and Kartic, supported by 300 armed men, to bring the Sherepore *ryots* to his residence at Shunkerpore, there to pay their rents, and present their offerings. These sirdars, in compliance therewith, in the month of January, seized and carried Khyroodeen and Lawaee Mundul before the prisoner's mother and Juggoo Mokhtar, who conducted the business during the absence of the prisoner, who was then in jail; to which representatives of the prisoner they paid eleven rupees as *sullamee*, and were told that four annas was the royal rent to be paid by them in future. These facts are proved by the evidence of the said Khyroodeen and Lawaee, who also affirm, that they were accommodated in a house, and remained there a day and night, and that in the next month (February) *Peadas* sent by the *Sirdar Pauguls* came to collect the four annas rent from them.

4thly. Having excited his sirdars Bukshoo and Deep Chund, to take *kubooleuts* from the Sherepore *ryots*, made out in the name of Teepoo *Badshah*, in compliance with which these sirdars forced *Kubooleuts* from Bishnadoss Mundul, in the month of December, and from Tirlook Mundul and Ghotao Mundul in the same month of December last, as was proved by these three persons on oath, Bishna asserting they made him pay 10 rupees, and Tirlook, that he was forced to pay 30 rupees revenue in advance to the treasury of Teepoo *Paugul Badshah*.

5thly. Having through his officer Moolook Chund, collector, exercised the power of ordering Gunga Ram, an outcast Hindoo, to be restored, and received into his former place in society, in the month of February last; and collecting through his said collector, supported by a large body of *Pauguls*, money as rents for himself (the prisoner Teepoo *Paugul Badshah.)* These facts are substantiated by the evidence of Gunga Ram Telee, the restored Hindoo, and Bydenaut and Magoram.

6thly. Having in May last, through his sirdar Bukshoo *Paugul*, supported by armed followers, extorted money as *sullamee* and

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nuzzur for him (the said Teepoo), who would shortly be proclaimed *Badshah*; and causing the *ryots* to pay the expenses of process, and tearing down and burning the houses of the inhabitants of Sumboogunge for the purpose of firewood, as proved by the evidence of Gunga Chowkeedar and Motee Khan.

7thly. Having in his possession the sword which is recognized and sworn to as being that of Bhugwan Singh Burkundaz, who was seized and made away with as proved in trial No. 8 of the calendar, and sworn to by the witnesses present, Surroop Singh and Sheikh Ooda.

8thly. Having in his possession warlike arms unbecoming his pretended character, but indispensibly requisite in support of his real practical conduct; consisting of twelve swords, eight shields, one pistol, one musket, three *jingals*, one *kuttar*, one *peshkubz*, one *chora*, and several steel barbs for spears, and a pair of large wooden stocks, as proved by the police Darogha, Radha Churn, and the witnesses to the search of his houses, Jar Mundul, Jynath, and Ram Mohun, who also confirm the testimony of many of the foregoing witnesses, to the facts of the prisoner being the terror and alarm of the neighbourhood, of his being an impostor, a man of known ill fame and of notoriously bad livelihood, of his having formerly been brought to the notice of the Magistrate and criminal Courts, his house having been searched in 1821, for plundered property acknowledged to be in it by a confessing robber, a proselyte of his own; of his having been tried for the murder of Sumboo *Paugul*, but acquitted of the crime, on the 10th of January 1822, under circumstances far from establishing his innocence; and of his having been named in 1824, by four witnesses in a case of burglary and theft, as being a man greatly suspected by them, in consequence of his parading over the country with a band of ten or twelve armed men in his suite: notwithstanding all which, it did not appear that he was then taken any notice of by the Magistrate.

The prisoner Teepoo *Paugul*, before the acting Magistrate, denied the criminal charges brought against him, as well as the allegation of his making proselytes. But he owns having a Fakeer's *Durgah*, and that he has seen Bukshoo and Jewun there offering up *Shirnee*, and that some persons do call him *Bhaee Sahib*, *Shah Sahib*, &c. &c. That the Sherepore people, as well as others, visit his *Durgah*, to obtain their several wishes and present their offerings; that on his arrival at Nusseerabad, the people came to him to obtain his blessing and their own wishes; that parties of ten and twenty used to visit him, and that wherever he went, there were always some people who accompanied him; that after signing the *Moochulka* to remain at Nusseerabad, he went home to see his mother, who he was told was sick, and that he remained there for four days; and he also owned, that the stocks, swords, shields, and firearms, &c. &c. produced in Court, all belonged to him.

Before this Court, the prisoner denies all criminality, says he is of the *Paugul Punthee* sect, but is a Moosulmaun Fakeer; that he knew not any difference between the Moosulmaun and *Paugul*

Punthee faith, but he does not eat with other Moohummudans, only with the *Paugul* brethren; that he never made proselytes; that he has three different places of residence, viz. at Seterkandee, at Oolmakandee, and Shunkerpore, all within the Pergunna of Soosong; that he has about 84 *koors* of land, 10 or 15 ploughs, and pays rent to the Rajahs of Soosong about 125 rupees yearly; that he has four watchmen and three cowherds; that he has five boats, two of which are pleasure-boats for taking him to and fro; that he owns the stocks, in which he used to confine deranged persons, also all the swords and firearms, &c. which he says his father left him; that with the firearms he shoots buffaloes, and the sword was his father's, which his witnesses Dowlut Khan, Shama Jallo, and Sheikh Jarro will prove; that in Aghun he came to Nusseerabad, and was told by the Serishtadar that he had been summoned by the Magistrate; that he went to the Nazir, and was then ordered to give a *Moochulka*; that he returned to his house at Shunkerpore, and saw his seven houses there as before; that three of them were for cows, and four for servants; and why the witnesses asserted them to be *cutcherries*, he does not know; that he knows no reason why his name should have been associated with that of Bukshoo, and Deep Chand, and other *Sirdar Pauguls*; but that he has no evidence to prove these statements to be malicious; that on his return to Nusseerabad, he was first ordered to give security, and then lodged in jail; and that the remainder of his witnesses will prove his being a *Fakeer Paugul* of good name and character.

The witness Dowlut Khan swears, that he was servant to the prisoner from the month of Bhadoon to Poos last; that he has seen many of the Sherepore *ryots* (20 and 50 at a time) come to the prisoner, bringing offerings of money, milk, &c. &c.; that they came to cut the prisoner's grain, which they did without receiving any pay; that he knows the sword produced, and that it was the prisoner's father's. The other two witnesses, Sama Jallo and Sheikh Jarro, assert they do not know the sword, nor any other of the weapons; that they believe and know the prisoner to be a bad man. Ramruttun swears, that he has known the prisoner for many years; he was a Fakeer, but had altogether changed, and was now a man of very bad character; that he saw the prisoner at Shunkerpore in Kartic or Aghun; that he saw five or six new houses raised at Shunkerpore for a king's court *(Badshahi cutcherree;)* that in these months constant crowds of men from Sherepore came to these new *cutcherrees*, and presented their offerings of sugar, fruits, fowls, as also their *nuzzurs* and rents; that he has seen the prisoner setting off on board his boats, attended by sixteen or twenty men, some of them armed; that the prisoner always had six or seven armed servants; that the people had great faith in his and his mother's miraculous powers; and that even after the prisoner's being thrown into jail, these same scenes continued at Shunkerpore, conducted by his mother and Juggoo Mokhtar, styled Dewanjee. The witness Byramoodeen also testifies to the fact of the prisoner's being at Shunkerpore in Kartic, and the raising of five or six new houses by the Sherepore *ryots*, for-

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ty or fifty of whom came daily with bangee-loads of offerings and *nuzzurs*; that all the people believed in his (the prisoner's) and his mother's miraculous powers, and that these new houses were styled the royal court (*Badshahi Cutcherree.*) This witness could say nothing in favour of the prisoner. Out of twenty-seven witnesses, eighteen were examined, not one of whom could speak well of the prisoner.

"Having thus," the officiating Judge continued, "brought both sides of the case to concentrate in the highly criminal guilt of the prisoner, still the mind is left suspended in doubt as to the prisoner's power to effect so great and general a rising among the inhabitants of Pergunnas Sherepore and Allapsing, as is exhibited in the record of this and the other trials transmitted; neither is the cause of these disturbances to be found alone in the prisoner, or in his machinations, but will be seen clearly exposed and fully developed in the proceedings of this Court, which have so minutely laid open the internal state of these Pergunnas, by which it is established, that the illegalities and the general system of oppression practised on the *ryots* by the Zumeendars and their representatives, had reduced the great body of the people to that state of despondency, despair, and excited desperation, as only to require the shadow of a hope of relief to be promised them, to induce them to engage in the most daring and criminal attempts to emancipate themselves from those grievances which they could no longer support. In this frame of mind, their superstition led them to consult, and their credulity to believe in the great Fakeer Teepoo *Paugul*, whose father's name and *Durgah* were notorious, and whose spiritual gifts were believed to be superior to those of his father. The prisoner, seeing his opportunity, embraced it; and with the evil design of raising himself on the ruin of his devoted votaries, gave them that counsel, which united the head and members of the *Paugul* association. For the crimes perpetrated by the several members thereof who have been brought to trial, sentence of conviction has been passed; and now the head (the prisoner) stands an accused criminal of the first rank."

The *futwa* of the law officer of the Court of Circuit declared the prisoner convicted of having embraced the new religion (termed *Paugul Punthee*) of his father, which is different from either the Moohummudan or the Hindoo tenets; of having thrown off his allegiance to the Government, and deceived and misguided his followers by telling them he should become *Badshah* or king of this country, and that the rule of the present Government and authority of the Zumeendars would not remain; of having forbidden all persons to obey the Government or its officers, or to pay revenue; of having instructed these *Pauguls* to proceed, contrary to reason and religion, in making converts by force and artifice, and uniting themselves into large tumultuous bodies, committing serious disturbances, and in the name of Teepoo (the prisoner) extorting from the *ryots* rents and offerings by force and oppression; of having, in consequence of his interference, caused the people employed in making the road for the Government troops to leave off their work, and the *ryots* to stop pay-

ing their rents, of having, through the medium of the *Paugul* sect, possessed himself of rents from the *ryots*, and having, through vanity and vice, established at his residence, a place styled the Regal Court, and there collected arms; of having scattered abroad the sparks of his evil counsel and wickedness, and thereby raised so hot a flame in the breasts of his *Sirdars*, that they armed themselves with spears and clubs, and in large bodies of their seditious followers, attacked and seized the officers of Government and of the Zumeendars, and beat, wounded, and killed them; plundered the supplies collected for the use of the troops of the Government, and rendered the situation of the inhabitants highly dangerous from these excesses; of having, even before the date of these outrages, been confirmed in evil ways and bad habits; and that, as, on behalf of the prisoner, his own witnesses even, had not testified any thing; he, the said prisoner Teepoo *Paugul*, was on full proof of the whole of the above crimes, deserving of exemplary punishment by *Acoobut*, extending to imprisonment unlimited, and such further punishment as the executive power might judge proper to award.

With respect to this *futwa*, the officiating Judge observed. "On the point of the guilt of the prisoner, I fully agree in opinion; and considering the same to be rebellion against the Government, and the prisoner to be the originator of the seditions, the counsellor and primary instigator of all those overt acts of rebellion, which have so long and unhappily prevailed throughout the disturbed Pergunnas of Sherepore and Allapsing, I consider the said prisoner Teepoo *Paugul* to be deserving of exemplary punishment, the extent of which resting with the executive Government, under the rules laid down in section 5, Regulation IV. of 1799, and section 3, Regulation XIV. of 1810, I do not consider myself at liberty to suggest any assigned limitation of punishment, and therefore submit the whole of the proceedings to the Court of Nizamut Adawlut. In the event of the prisoner's life being spared him, I beg leave to recommend his person being removed from this district at the earliest period possible, as the spiritual sway which he exercises over the minds and consciences of the people here is not confined to his own sect alone."

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Teepoo *Paugul*, son of Kureem, of causing the *ryots* to leave off repairing the roads and paying rent to the Zumeendars, saying he should soon be king of this country, and of being the contriver and instigator of sundry acts of extortion and disturbance committed in the district, declared him liable to *Tazeer* for the offence.

By the Court. C. Smith, (second Judge.) "The record, in my opinion, proves nothing atrocious against the prisoner. The matter most clearly brought home to him is his dissuading the *ryots* from working on the roads and paying rent, saying he should soon be king. I see no proof of his having been concerned in the murders charged in the other trials; and the whole of his conduct, as detailed in this trial, seems too ridiculous and paltry to admit of its being con-

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sidered as high treason against the state. I would convict him of seditious practices and disturbing the peace, and for these offences confine him with labour for a term of five years."

The fifth Judge, (A. Ross,) entirely concurring in the above opinion, the sentence proposed by the second Judge was issued accordingly.

Upon the subject of the Regulations IV. of 1799, and XIV. of 1810, adverted to in the officiating Judge's letter of reference, the Court saw no necessity to add any thing to the remark which they had recorded in trial No. 7 of the same calendar, which was to the effect, that, though it might have been competent to the Government, under the regulations which the officiating Judge cited, to take the case out of the ordinary administration of criminal justice, yet as the Government had not thought fit so to do, there could be no legal objection to the case being tried before the ordinary tribunals, established for the trial and punishment of offenders.

1826.
Jan. 28th.
TULLOO TEWAREE'S case.

GOVERNMENT, *against* TULLOO TEWAREE.

Charge—MURDER.

The prisoner (a Brahmin) sentenced to be hanged, being convicted of the murder of his infant child by dashing it three times on the ground in a fit of anger, occasioned by a dispute about land.

TULLOO Tewaree, the prisoner, was charged with the murder of his infant daughter, and tried for that offence at the first sessions of 1826, for zillah Mirzapore.

The offence was committed on the 3d of July 1826, and the circumstance which led to it, was the attachment by the mortgagee of the village (named Hitcha) of the land the prisoner cultivated. He having fallen in arrears of rent, Hitcha went with several ploughs, and was ploughing the land, when the prisoner interfered; but the mortgagee demanded payment of the arrear due, before he restored the land. After some conversation had passed to this effect, the prisoner went to his house, which was near, and seizing his infant daughter, about fifteen months old, from the arms of its mother, brought it to the field in dispute, and holding it by its legs, struck its head thrice on the ground, which caused its instant death. Having done this, he proceeded to the Thana to complain against Hitcha and others of having beaten him. The prisoner, in his defence, denied the act; and stated before the Magistrate, that he had the child in his arms when he was interposing to prevent the others from ploughing or sowing his land, and that Risaul and the rest threw him down, and he fell on the child. Tehul, Zenda, and Narain, three witnesses, deposed that they saw the prisoner commit the act, as stated in the charge. The wife of the prisoner, before the Thanadar, stated, that the prisoner seized the child from her.

1826.
TULLOO TEWARREE'S case.

The law officer of the Court of Circuit convicted the prisoner of the crime of wilful murder, in which the Judge fully concurred.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Tulloo Tewaree, of murdering his infant daughter, by dashing her thrice upon the ground, declared that, had he not been the father of the deceased, he would be liable to suffer death by *Kissas* for the crime.

By the Court. C. Smith, (second Judge.) "The fact is proved by four witnesses, who seem entitled to credit. The act shews the intent to have been murderous, and nothing is more probable than such an act in a village Brahmin of the Benares division. I see no reason why the prisoner should not be capitally sentenced."

The chief Judge, (W. Leycester,) concurring in the conviction of the prisoner, seeing no circumstances in his favour, and the relation between the deceased and the prisoner being, under the Regulations, no bar to a capital sentence, sentence of death was passed accordingly.

GOVERNMENT, *against* DURSUN.

Charge—KIDNAPPING.

1826.
Jan. 31st.
DURSUN'S case.

In a case of child stealing, it is competent to a Judge of Circuit to pass a definite sentence of four years imprisonment, and an eventual one of three in addition, should the child be not forthcoming, the whole term not exceeding seven years.

THE prisoner Dursun was tried for the theft of the daughter of Bowungeer, at the first sessions of 1826, for zillah Mirzapore.

The prisoner was charged with having inveigled away the girl, about six years of age, who had not been heard of by her parents since the day the prisoner was said to have enticed her away. The prisoner, it appeared, had, for two days previously to the loss of the child, been a visitor at the house of Bowungeer; but this fact he denied, as well as having had any previous acquaintance with the child's parents. Both points, however, appeared to have been clearly established on the trial.

The law officer of the Court of Circuit convicted the prisoner on violent presumption, in which the Judge concurred; but having doubts of his competency to pass such sentence as appeared to be calculated to lead to a recovery of the child, viz. to award, in addition to a specific period of imprisonment, an eventual sentence of three years, should the prisoner, as he alone appeared to have disposed of the child, not give a clue by which it might be recovered, the Judge referred the case for the orders of the Nizamut Adawlut. He added, that had he not entertained doubts of his competency to pass an order to this effect, he should have sentenced the prisoner to four years imprisonment, and to a further period of three years, eventually.

The following order was issued on the occasion of this reference by the Court of Nizamut Adawlut, (present C. Smith and W. Dorin.)

1826.
DURRUN'S case.

"The Court observe, that the total period of imprisonment, specific and eventual, not exceeding seven years, it was within the competence of the Judge of Circuit to pass upon the prisoner, Dursun Rajpoot, the sentence which he informs the Court he should have passed, had he not had doubts of his competency.

"Ordered, therefore, that the proceedings on the commitment be returned, and that Mr. Gorton pass the sentence which appeared to him proper, submitting an abstract thereof, in the form prescribed for sentences passed by the Court of Circuit without reference.

1826.
March 4th.
KHYRUN SHAH KHAN'S case.

GOVERNMENT,
against
KHYRUN SHAH KHAN.

Charge—CORRUPTION.

The prisoner was charged with the corrupt receipt of 1500 Rs. in having, while in the situation of *Kotwal*, by his private influence, procured the office of a Darogha for an individual on a bargain for the above sum. The receipt of part of the sum in question was established, and he was unable to prove on what account; but the prisoner was acquitted by the Nizamut Adawlut.

THIS trial came on at the first sessions of 1825, for zillah Meerut. The case was in substance as follows. Khyrun Shah Khan, the former *Kotwal* of the town of Meerut, under the late Magistrate Mr. Gorton, was committed on the charge of having received a bribe of 1500 Rupees, from Hookoomut Rai, for procuring for him the appointment of Thanadar of Kandleh; in aggravation to which, it was stated, that Khyrun Shah was aware, that this sum was to be, and was, oppressively collected from the inhabitants of Kandleh. The only sum which appeared to have reached Khyrun Shah's hands, was 225 Rupees, which was sent in the form of a *hoondee*, drawn by Boolchund, a *mahajun* of Kandleh, on Radhakishen and Ishk Lall, bankers at Meerut; which purported to be for money paid to them by Fyzoollah, Jemadar of Kandleh, on account of Shah Baz Khan (Khyrun Shah's brother-in-law); but the tenor of this *hoondee* was altogether contradicted by the evidence of the Bankers, who deposed, that they never received any money from Fyzoollah, but that when they went to him for payment, the day after the *hoondee* was given, Hookoomut Rai desired them not to demand it from Fyzoollah, for he would pay it himself; they further deposed, that Hookoomut Rai accordingly allowed the charge in his accounts with them. The deposition of Sheo Lal, (who was dead, and which had been proved to have been taken on oath,) proved the payment of 255 Rupees to Khyrun Shah. These were the only facts substantiated against Khyrun Shah; unless the evidence given by Fyzoollah before the Magistrate, Mr. Smith, and before Mr. Mackenzie, the former Judge of Circuit, could be admitted as such. Fyzoollah on those occasions stated on oath, that he, at various times, conveyed money (in all 935 rupees) to Khyrun Shah from Hookoomut Rai. In regard to the sum above specified (225 rupees) he stated, that he sent it as a part of the above amount; that Khyrun Shah received it, and that Hookoomut Rai told him, he had to pay

1826.

KHYRUN SHAH KHAN'S case.

1500 rupees to Khyrun Shah. Before Mr. Glyn, and the Judge of Circuit, who lastly took up the case, Fyzoollah said, that both his former depositions were false. He added, that he was kept a month in the jail, by order of the Magistrate, and that he deposed to whatever he had been desired to say; that the *hoondee* in question was paid for by himself the day before he got it from Boolchund, and that he received the money from Sadoolla, on account of Shah Baz Khan. This Fyzoollah was, on the ground of the discrepancy between this and his former deposition on oath, committed for perjury, and had been found guilty. From proceedings and other documents received from the Magistrate, it was perfectly clear that Fyzoollah was imprisoned, that he was sent out into the district by order of the Magistrate, where his deposition was taken by Ram Lal, then a Foujdaree writer, who was afterwards, though one of the Dewany Omla, appointed to officiate as prosecutor, when Fyzoollah's deposition was again taken before Mr. Mackenzie, although the proper Vakeel of Government was at that time at the station. It also appeared, that shortly after deposing against Khyrun Shah, Fyzoollah was restored to be Jemadar of a Thana, though his own case had not been brought to a decision, nor was it ascertainable how or when he came to be set at liberty. Another witness against Khyrun Shah was Balkishen, who laid the information against him. This man was taken from jail to give his deposition, and was a few days afterwards set at large, why or wherefore did not appear. A most important fact was deposed to by him, viz. the agreement between Khyrun Shah and Hookoomut Rai regarding the payment of the fifteen hundred rupees; but his information was totally unsupported by other evidence, and altogether improbable, and he himself was a notoriously bad character. The evidence of the other witnesses was altogether unimportant as it regarded the prosecution. Khyrun Shah pleaded not guilty. He gave his defence in writing, in which he stated, that after resigning the office of *Kotwal*, he remained several months at Meerut, during which time no complaints were made against him; that *ishtihars* for complaints against him were issued, and proclaimed by beat of drum by the Magistrate; that hundreds of innocent people had been apprehended, and confined in jail and other places, at the instigation of evil minded persons; and that, in order to procure their release, they gave false depositions against the former *Omla*, and that of these Balkishen was one. That he had no power to procure the removal from office, or nomination, of any one; for he could not even procure the vacant office of Serishtadar for his son. That the depositions of Dhoukul and Askurn, in the Foujdaree Court, contradicted Balkishen's, relative to his coming with them to the *Kotwalee*; and as he did not come to Meerut with them, it was impossible he could have been present at the agreement said to have been made with Hookoomut Rai, to pay 1500 rupees; that Balkishen being a prisoner in a different case, it did not appear how and why he had been permitted to become an informant in this case; that nothing could be thence inferred, but that he had been tutored. If otherwise, why did he not complain when the two

but, the money having been paid long after his secession from office, and there being no sufficient proof of a corrupt agreement.

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KHYRUN SHAH KHAN'S case.

proclamations for complaints were issued; that he (Balkishen) was in the constant practice of laying false informations, some of which were yet in Court. The prisoner further stated, that some of the witnesses in the case were detained as prisoners, till they gave their depositions against him; that the Zumeendars who had given evidence declared, that Balkishen was notoriously a bad man, and that they contradicted his evidence relative to being sent for to the Thana to be assessed; that they also stated that his (the defendant's) name was never mentioned to them there. That Mahomed Shah, who succeeded him on his resignation, had sworn, that he (the defendant) failed to obtain the office for his own son; and that after his resignation, he never interfered in any cases at the *Kotwalee*; that he had several characters from various gentlemen under whom he had served; and lastly, he added, that Mahomed Khan (Jemadar of the *Kotwalee*) *bonâ fide* received the money (as specified in the *hoondee*) on account of Shah Baz Khan, and paid the proceeds to Shah Baz Khan's mother.

In referring this case for the orders of the Nizamut Adawlut, the Judge of Circuit made the following observations. "In his defence, Khyrun Shah has omitted to state a most important fact in his favour, which is, that he resigned the *Kotwalee* on the 26th of June 1820, and that the *hoondee* for 255 rupees was not drawn till November or December of the same year. This appeared in the course of the investigation, and it would be unjust not to notice it. It appears scarcely probable that a bribe should have been paid to Khyrun Shah, six months after he had resigned, and when he had not influence enough to obtain a succession to his office for his own son. The points of his defence which appear true are as follow. Two *Ishtihars* were issued by the Magistrate, inviting complaints; one specially against him and his relations, and the other against the former *Omla*. 2dly, Ramsahy and some other witnesses were certainly kept prisoners till they gave their evidence; and Balkishen and Fyzoollah (the imprisonment of both of whom is proved by official documents, though the former denies it) would not, in my opinion, have deposed what they did before the Magistrate, had they been at liberty. I may here observe, that Ram Lal's nomination to prosecute before Mr. Mackenzie was likely to have the effect of making them adhere to their former depositions, even though untrue, and Fyzoollah declared in his defence on the charge of perjury, that this said Ram Lal endeavoured to intimidate him on that occasion, which assertion I believe. 3dly. The depositions of Balkishen are very contradictory: in the Foujdaree he swore, that at the time of the defendant's agreeing to send Hookoomut Rai to Kandleh, Dhoukul and Askurn were present; but before me he said he alone was there. 4thly. The evidence of Indraj, Cheit Ram, Ramdial, and Mujlis, mentioned in Balkishen's depositions, flatly contradict what he states: moreover some of them gave him a bad character. 5thly. Mahomed Shah declares, that he obtained the appointment of *Kotwal*, against the exertion of Khyrun Shah to procure it for his own son."

1826.
KHYRUN SHAH KHAN'S case.

The law officer of the Court of Circuit delivered a *futwa* against Khyrun Shah, convicting him on strong suspicion of the corrupt receipt of 255 rupees, and declared him liable to *Tazeer;* and the Judge of Circuit expressed his opinion, that the receipt of 255 rupees from Hookoomut Rai, six months after his resignation, was fully proved; that Khyrun Shah had failed to shew on what account the money came into his hands; that concealment was attempted, and the story he told in his defence as to its disposal not proved; that there was strong reason to suspect that it was a present; but that, considering that he was at that time no longer a servant of Government, and had not been so for six months, and that the evidence of Balkishen as to the previous agreement was unworthy of credit, it was by no means apparent how the receipt of that money could be called corrupt, or how Khyrun Shah could be punished for bribery.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner Khyrun Shah of the charge, declared him entitled to his release.

By the Court. C. Smith, (second Judge.) "The receipt of the sum of rupees 255 being clearly proved, and by the defendant unaccounted for, I think that there is a violent presumption of its having been received corruptly, in performance of a corrupt and extortious agreement, made when the prisoner was in office. It is clearly, therefore, an official bribe, and I would punish the prisoner by six months imprisonment without labour and irons in the civil jail, and a fine of three times the sum proved, to be commuted, if not paid, for a further term of six months."

W. Leycester, (chief Judge.) "I concur with our law officers in thinking no crime established against the prisoner. Balkishen is wholly unworthy of credit, and no other witness speaks to any corrupt agreement made between him and Hookoomut Rai at the time of his appointment to Kandleh. The 255 rupees certainly reached Khyrun Shah; but any suspicion arising from its not being clear on what account the said sum was paid, is counterbalanced by the improbability that Hookoomut Rai should have extorted and paid to the prisoner the sum in question, six months after the resignation of Khyrun Shah. Hookoomut was appointed on the 16th, and Khyrun resigned on the 26th of June 1820. In addition to the absence of all proof, it does not seem likely that Khyrun would make a corrupt bargain, when he must have contemplated his resignation, and which could be fulfilled while he was in office."

The third Judge (C. T. Sealy) concurring in the above opinion, an order for the acquittal and release of Khyrun Shah was immediately issued.

1826.
April 1st.
LULLOOA'S case.

MIROOA,
against
LULLOOA.

Charge—DEFLOWERING A GIRL, aged 8 years.

The prisoner (a youth) punished with fifteen stripes of the rattan, and six months imprisonment on conviction of carnally knowing a girl aged eight years; the consent of one so young being deemed immaterial.

THE prisoner was tried at the first sessions of 1826, for the joint Magistracy of Futtehpore, being charged with violating the person of Musst. Luchmunia, the prosecutor's daughter. The only direct evidence to the fact was that of the girl, who was about eight years of age at the time of the occurrence. She deposed, that the prisoner committed the act charged against him; and it was evident, from the state in which she was seen immediately after, that she had suffered in the manner she described. When taken to the Thana, the prisoner acknowledged in the presence of two witnesses, who corroborated this point, that he had had carnal knowledge of the girl, with her consent.

The law officer of the Court of Circuit convicted the prisoner under his admission, and declared him liable to *Acoobut*. The Judge of Circuit referred the case, under the provisions of clause 3, section 6, Regulation XVII. 1817, considering the presumption of the prisoner's having committed the act with which he was charged, sufficient to convict him.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner Lullooa Brahmin of the charge, declared him entitled to his release.

The second Judge of the Nizamut Adawlut (C. Smith,) proposed that the following sentence should issue in this case. "The Court, deeming the prisoner guilty of carnally knowing a girl eight years old, at which age her consent was immaterial, and adverting to the prisoner's youth, and to all the circumstances of the case, sentence the prisoner Lullooa to receive 15 strokes of the rattan, and to be imprisoned for the term of six months.

W. Dorin, (fourth Judge). "The charge against the prisoner is not a charge of rape, but merely of having had 'illicit carnal knowledge of the prosecutor's daughter.' The Judge of Circuit, however, has referred the case, under Regulation XVII. 1817, on the ground apparently of his deeming rape established against the prisoner. It appears to me, that the question of rape is not before us. There may be a conviction, in a criminal trial, of a less offence than the one charged, but not of a greater. Under this view, the proper course would have been for the Judge of Circuit to have been told to pass such sentence as he might deem proper for the offence of defloration (not against consent) of a girl eight years of age. The English doctrine regarding the assent of children being immaterial, I am against adopting it in this country, where females come to maturity so early. If the case were sent back to the Circuit Judge, however, great delay might probably take place before it came on again; and therefore I would agree to pass sentence here, and adopt the sentence proposed by the second Judge, with the omission only of the words

at which age her consent was immaterial." The *futwa* of our law officers is purely technical; and as to the fact of carnal knowledge, there can be little doubt. I would convict, and view it as a misdemeanour, by reason of the injury, not only to the daughter, but to the parents. It is certainly not diminished in criminality by the age of the girl; but there is no medium, under the English doctrine, between rejecting that doctrine altogether, and viewing the offence as of a very heinous nature, much beyond misdemeanour, requiring six months imprisonment. *Zina*, which includes fornication as well as adultery, is an offence punishable in Moohummudan law; and where circumstances call for punishment, as in this case, it is correct to inflict it."

1826. LULLOOA'S case.

The second Judge observed, however, that he saw no reason to alter the wording of the sentence, as he was rather inclined to the opinion, that the act was committed with the girl's consent; and it was only because he considered consent at her age as immaterial, that he deemed the prisoner guilty, or would at all punish him; and that, but for his youth, he should have suggested a heavier sentence.

The third Judge (C. T. Sealy) expressing his concurrence in the opinion recorded by the second Judge, the sentence proposed by him was issued accordingly.

GOVERNMENT,
against
DURREONA.

1826. April 3d. DURREONA'S case.

Charge—MURDER.

THE prisoner above named being charged with the murder of one Ramdennoa, was tried for that offence at the first sessions of 1826, for zillah Allahabad.

The prisoner in a drunken quarrel with the deceased, received a blow from him, and in consequence inflicted a wound on his groin with a knife, which caused his death: sentenced, under all the circumstances of the case, to five years imprisonment.

In this case, the wife of the deceased declined to prosecute, saying, that the prisoner committed the offence in a state of intoxication. It appeared, from her deposition made before the Magistrate and the Court of Circuit, that, on the evening the offence was committed, the deceased and the prisoner had been drinking, and both were intoxicated. The deceased desired the prisoner (who appeared to have been a servant of his) to take some clothes belonging to the Thana people to the Thana. The prisoner declined, saying he was not able, and the deceased struck him with his hand, upon which the prisoner seized a large knife, and wounded the deceased in the groin, which wound appeared to have caused his death two or three hours after. Before the Thanadar, the wife of the deceased stated, that the prisoner, the deceased, a person named Dewa, and the witness Hussewa, had a dispute, and that some verbal altercation arose between them; that Dewa went and brought a knife; shortly after which, her husband (who was wounded outside his house) came inside, calling for a weapon, and saying that Dewa had wounded him.

1826.
DURREO-NA'S CASE.

Of the other three witnesses examined by the Court of Circuit, Punchum and Nunda deposed, that they saw the deceased after he was wounded, at which time he said that the prisoner had wounded him; and that the prisoner was in a state of intoxication. The remaining witness Hussewa deposed, that he saw the prisoner and the deceased quarrelling and abusing each other, when the deceased struck the prisoner twice with his hand, and the prisoner struck at the deceased with a large knife; but he did not see any wound inflicted, as he then ran off. The cause of the dispute he stated to be the same as that assigned by the wife of the deceased at the Thana. This witness, however, in the first part of his examination, did not mention these facts. The evidence indeed was by no means satisfactory, as it appeared, from the statement of the witnesses, that they themselves were all intoxicated at the time. The prisoner made a confession before the Magistrate, that he inflicted the wound which caused the death of the deceased; but that he was drunk when he did so.

The law officer of the Court of Circuit convicted the prisoner, and declared him liable to *Acoobut i Shudeed*, or even to death.

The Judge of Circuit concurred in the conviction; but, in referring the case, he stated, that he entertained no doubt of the prisoner's having been very drunk when he committed the act.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of the wilful murder of Ramdennoa, declared *Kissas* to be barred by the wife of the deceased declining to prosecute, and the prisoner to be liable to *Acoobut*, for the satisfaction of public justice.

The Court (present C. Smith and C. T. Sealy) deeming the prisoner guilty of culpable homicide, and adverting to all the circumstances of the case, sentenced him to be imprisoned with labour for the term of five years.

1826.
April 29th.
BUKHTAWUR'S CASE.

GOVERNMENT,
against
BUKHTAWUR.

Charge—FORGERY.

The fact of filing a forged deed in a court of justice by the person interested in establishing its contents, af-

THIS trial came on at the 1st sessions of 1826, for zillah Cawnpore. The prisoner was charged with having forged a certain *Byenama*, or bill of sale, with a view to defraud the plaintiff in a suit then pending, and having filed the same in the Court of the sudder Ameen. The prisoner denied having fabricated the deed in question, which he admitted, however, that he had filed in a suit pending in the civil Court of Cawnpore, in which he was the defendant.

This *Byenama*, the Judge of Circuit observed, was in itself, without any further evidence, so palpable and gross a forgery, that he

1826.

BUKHTAWUR'S case.

could not but anticipate a sentence of conviction and punishment against the prisoner, whom the *futwa* of his law officer acquitted, and would release. Without dwelling, the Judge observed, particularly upon the document in its general features of old date, new ink, and scorched paper; the seal, transferred from some other paper, and pasted on this so awkwardly, rendered an ignorance of the imposition on the part of the prisoner utterly out of credibility; and it was impossible to believe him innocent of intentional fraud, however he became possessed of the deed, under the fact of its having been offered by him as a faithful evidence of his right, to what it alone conveyed to him. He added, that he regarded the prisoner as fairly convicted of a most barefaced fraud, and recommended that he should be sentenced to two years imprisonment with hard labour.

Fords sufficient presumption that he uttered it knowing it to be forged.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner of the charge, declared him entitled to his release.

The second Judge of the Nizamut Adawlut (C. Smith) concurred in this *futwa*, and proposed that a sentence of acquittal should be issued, accompanied by the following observations. The Court observe, that in this case, there was no evidence taken by the Judge of Circuit on the part of the prosecution; the Judge having immediately on recording the prisoner's answer of not guilty, called upon him for his final defence. The Court remark, for the Judge of Circuit's information and future guidance, that, upon the prisoner's pleading not guilty, he should have called upon the prosecutor for proof of the suspected deed, having been actually filed by the prisoner in the Sudder Ameen's court, and of its being a forged deed, and not have called upon the prisoner for his final defence, until something had been established against him, of which it was necessary that he should furnish a refutation.

W. Leycester, (chief Judge.) "I apprehend no one can doubt the document in question to be a foul forgery. The only question is, whether the prisoner knew it—what reason had he to think it a true paper? The exhibition of a forged deed is proof that a real deed of the kind had no existence; and of the nonentity thereof, he could not be ignorant, and consequently he must have been aware that he was exhibiting a document in proof of a transaction which never took place. Is not the fact of filing a forged paper sufficient to warrant a presumption against the prisoner? I do not see how the prisoner could have been deceived into the belief that he was filing a true paper. I would convict, and sentence to two years with labour, as recommended by the Circuit Judge. I concur in noticing the irregularity of not taking evidence: the admission of filing the paper in the prisoner's defence stands in stead of it as far we are concerned."

C. T. Sealy, (third Judge.) "It is not possible, I imagine, that the prisoner, however unlettered he may be, could have been ignorant of the deed which he filed in the Pundit's court being a forged one. If his hearsays from his father (supposing that all he relates regarding them be true) are to exempt him from punishment, hereafter it will only be necessary for a father to forge a deed of sale, and a son to exhibit

1826. BUKHTAWUR'S case.

it for the mere chance of its escaping detection. He had arrived at manhood long before his father's death, and might with safety have been entrusted with the secret of the forgery, if the father were the forger, which the son wishes to make him out, as from the *Cazee's arzee* in the Foujdaree *nuthee*, it is evident, that there is nothing on record in his office on the subject of the sale in question, on which depended entirely his right to hold half of the village. I would convict him of knowingly filing a forged deed of sale, in a suit in the Pundit's court, with a fraudulent intent, and sentence him, as proposed by the Judge of Circuit; the mere filing of the forged deed, in my opinion, not being sufficient to convict him of the forgery. I concur in the admonition to the Judge of Circuit, who had no right to anticipate a full admission of his guilt from the prisoner, and because the Regulations and the Circular Orders of this Court, have directed the course he is to pursue in the trials that come before him."

A sentence of two years imprisonment was passed upon the prisoner accordingly.

1826. May 24th. PURSHADOOA'S case.

CHUNNA, *against* PURSHADOOA.

Charge—MURDER.

The only evidence against a prisoner being his own confession, that he killed the deceased while in the act of adultery with his (the prisoner's) wife: held that the confession should be taken altogether, and the prisoner released.

AT the 1st sessions of 1826, for zillah Cawnpore, the prisoner was arraigned on the charge of having murdered one Bullooa, son of the prosecutor. The facts of the case were simply as follow. The prisoner caught the deceased Bullooa in the act of criminal intercourse with his wife; knocked him on the head with a tent-pin; carried the body to some distance from the house, and deposited it, where, on the following morning, it was found, and identified. An earthen pot with some bloody rags in it, was discovered in the course of the search which ensued, near the prisoner's dwelling; and some further stains of blood being observed there, he was apprehended, with his son Mindooa, a boy of about 18 years of age, and his (the prisoner's) wife, who was acquitted by the joint Magistrate, and admitted as an evidence on the commitment of the other two. With some vague and evasive attempts at modifying his offence, by pleading intoxication, and a scuffle between himself and the deceased, in which they both fell, the prisoner himself confirmed the above, as being the real facts of the case; the prosecutor (the deceased's father) deposing to the criminal intercourse alluded to, as having subsisted above two years. In submitting the trial for the final orders of the Nizamut Adawlut, the Judge of Circuit observed, that under all the proved and probable circumstances of the case, he deemed the imprisonment already undergone by the prisoner, since the 8th November 1825, a sufficient atonement, and recommended his release. The prisoner Mindooa

was acquitted, and his discharge directed, on the termination of the trial. 1826. PURSHADOOA'S case.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner of the charge of the murder of the prosecutor's son, on the ground, that he killed him on seeing him in the act of adultery with his wife, declared him entitled to his release.

The second Judge of the Nizamut Adawlut, (C. Smith,) not being satisfied of the truth of the prisoner's plea, deeming him guilty of murder, and adverting to all the circumstances of the case, was of opinion, that he should be sentenced to imprisonment with labour for life, in the jail at Allipore. The chief and fourth Judges, however, (W. Leycester and W. Dorin,) being of opinion, that it would not be just to separate the unfavourable part of the prisoner's confession from that which made in his favour, and that his confession being the only evidence against him, should be taken as it stood, or not at all, agreed in the conclusion of the law officers, as to the propriety of acquitting the prisoner, and directed that he should be forthwith discharged.

BHOWANEE, *against* ILLAHYA.

1826. June 3d. ILLAHYA'S case.

Charge—THEFT.

THE charge in the calendar was "for stealing from the dwelling house of the prosecutor in the night, to the amount of 25 rupees." The trial took place at the first sessions of 1826, for zillah Furrukhabad, and was submitted to the consideration of the Court of Nizamut Adawlut by the Judge of Circuit, accompanied by the following observations.

In a case of theft, attended by murder, the Magistrate committed one of the persons concerned, on the simple charge of theft, absolving him from participation in the murder; and in another case of theft, attended by burglary, committed on the same night, in which the same

"In the statement of the prisoner Illahya before the Magistrate, the Court will find a detail of the proceedings of himself and the gang with which he was connected, on the night in which the present theft was committed: one of the transactions there recorded involving the murder of a person named Teeka by the wound of an arrow, shot by the hand of Ruttun, one of Illahya's party. Another theft, attended by burglary, on the same night, in the house of one Hoolasee, completes the confession: but the prisoner is committed for trial before this Court on the charge above specified, which, standing alone, the Magistrate was himself competent to dispose of, while in the case of murder just mentioned, without reference to any superior authority, or stipulation with the prisoner, he (the Magistrate) has declared him acquitted, on the probability of his information leading to the conviction of the individual Ruttun, whom he has chosen to name as the immediate murderer. On a due consideration of the circumstances in connection with this commitment,

1826.

ILLAHYA'S case.

I determined to secure the existing evidence by proceeding on the trial, but to withhold the sentence till the facts should be submitted to the Nizamut Adawlut. The prisoner has been convicted; and, by the conviction, is justly liable to a confinement which, otherwise, might be conceived, perhaps, under the Magistrate's acquittal, more or less arbitrary: as it is, I deem it an exercise of common justice to quash the irregular proceeding of that officer, and would recommend that the testimony in the trial just concluded before this Court, be considered as so much evidence in that involving the greater crime, for the perpetration of which the prisoner should be committed and tried at the ensuing sessions."

individual was concerned, he made no commitment, but appended his proceedings to the former case. The Court of Nizamut Adawlut, deeming these proceedings irregular, quashed them, and directed that the prisoner should be committed on the whole of the first and also on the second charge. The Circuit Judge was at the same time informed, that he should himself have quashed the commitment, with the concurrence of one of his colleagues at the sudder station.

By the Court of Nizamut Adawlut, present W. Leycester, (chief Judge.) "This is a most strange proceeding. The Magistrate, in committing the prisoner, states, that he would have been competent to pass sentence, if Teeka had not been killed during the transaction, and he immediately proceeds to commit him merely for the theft. He writes another *roobukaree*, absolving him from the guilt of murder, and disposes of a case of burglary by appending it to the charge of theft, without committing it. I think we should return the Foujdaree proceedings, and order the prisoner to be tried for theft attended with murder, and to be tried separately for the burglary, and that the Magistrate should be called on to explain."

A. Ross, (fifth Judge.) "It appears that Teeka received the wound of which he died from one of Illahya's accomplices, while they were in the act of committing the theft in Bhuwanee's house, for which Illahya was committed on trial, before the Court of Circuit. The Magistrate's order, absolving Illahya of the guilt of the murder of Teeka, was irregular, and I, therefore, concur in the chief Judge's proposition, for directing that Illahya, (and I would add, his accomplices, if any of them have been apprehended,) should be committed to be tried at the ensuing sessions of jail delivery for "theft attended by murder;" and also that he (and his accomplices, if apprehended) should be separately committed for the burglary in the house of Hoolasee. I think the Judge of Circuit ought in this case, after having obtained the concurrence of one of the Judges at the sudder station, to have annulled the Magistrate's order, absolving Illahya of the guilt of killing Teeka, and directed the prisoner to be committed for "theft attended with murder," and to have tried him on that charge before closing the sessions of jail delivery, at which he was brought to trial for the simple theft."

The following order was issued accordingly by the Judges above named. "The Court of Nizamut Adawlut, observing that the prisoner Illahya was committed for a simple theft, whereas one Teeka having been wounded (and he ultimately died of his wounds) during that theft, he ought to have been committed on the charge of theft attended with murder, annul the said commitment, and direct that Illahya, with any of his accomplices who may have been since apprehended, be tried at the ensuing sessions of the Court of Circuit on the above charge of "theft attended by murder." The Court further observe, that the Magistrate has omitted to bring Illahya to

trial for burglary in the house of Hoolasee; but by the discharge of the prosecutor and witnesses, and annexing his proceedings on the burglary, with his commitment for a simple theft, has manifested his intention of dropping entirely the case of burglary. The Court, deeming it necessary that the prisoner should stand his trial in this case also, direct, that he, with any of his accomplices who may have been apprehended, be committed on the charge of burglary in the house of Hoolasee. The Court notice, for the information and future guidance of the Circuit Judge, that in the opinion of the Court, the proper course for him to have pursued in this case would have been to have recorded his opinion, as expressed in his present letter, in a Persian *roobucaree*, and to have transmitted it to the sudder station, with the object of obtaining the concurrent voice of another Judge, by which, in all probability, the prisoner would have been tried on the charge above specified at the sessions then holding by Mr. Rattray at Furrukhabad. The Court of Circuit will call on the Magistrate to explain on what ground he thought himself justified in absolving the prisoner Illahya from all guilt in the case of the murder of Teeka, by one of his accomplices in the theft; and why he failed to commit the prisoner to take his trial for the burglary in Hoolasee's house."

1826.
ILLAHYA'S case.

MUSST. JYE DOORGA,
against
KULLOOA and seven others.

Charge—DACOITY.

1826.
June 17th.
Case of KULLOOA and others.

THE prisoners Kullooa, Ruhumutoollah, Janoollah, Nakeea, Isoollah, Pacha, Ajaum, and Nagore, were charged with Dacoity, and tried for that offence at the first sessions of 1825, for zillah Dinagepore.

Held that the provisions of Regulation XVI. 1825, do not alter those of Regulation XV. 1814, by which the Court of Circuit is competent to reduce the punishment of prisoners convicted of two offences to fourteen years im-

The law officer of the Court of Circuit declared in his *futwa*, that all the prisoners were convicted of the charge, in which *futwa* the Judge of Circuit agreed; but he referred the case to the Nizamut Adawlut on the following grounds. Six of the prisoners in this case, viz. Kullooa, Ruhumutoollah, Nakeea, Janoollah, Pacha, and Nagore, had been convicted in another case of Dacoity, (No. 5, of the postponed calendar for the second sessions of 1824,) which was forwarded to the Nizamut Adawlut, under a separate cover, at the same time with the present trial. There was no circumstance of aggravation in either case, nor were there any circumstances of a nature to induce the Judge to recommend a mitigation of punishment; but as by clause 2, section 3, Regulation XVI. of 1825, he thought himself precluded, under any circumstances in which a robbery might have been committed, by three or more armed persons, from awarding a sentence of a greater or less degree of punishment, than

1826.
Case of KULLOOA and others. prisonment.

14 years imprisonment in banishment, he deemed it right to transmit both cases for the final orders of the superior Court.

On consideration of the proceedings submitted, however, the Court of Nizamut Adawlut (present W. Leycester and C. Smith) were of opinion, that there did not exist any legitimate ground of reference in either case, and they were therefore both returned with the following order. "The Judge of Circuit appears to have referred these two cases for no other reason, than that, under Regulation XVI. of 1825, he holds himself bound to pass against those prisoners, who are convicted in both cases, a sentence of 14 years imprisonment in each case, making in all a sentence of 28 years imprisonment.

"The Court, however, being of opinion, that the provisions of the above cited Regulation do not at all alter those of Regulation XV. of 1814, under which the Judge of Circuit is competent to reduce the punishment of prisoners convicted of two offences to 14 years imprisonment, do not think it necessary to pass any sentence in those cases; and direct, therefore, that the proceedings on the trials and commitments be sent back, with instructions that the senior Judge himself pass sentence, transmitting an abstract thereof, in the form prescribed for sentences passed by the Judge of Circuit without reference."

1826.
July 5th.
ABHURSA'S case.

BALA,
against
ABHURSA.

Charge—MURDER.

The body of the prosecutor's wife was found hanging to a beam, inside her house, in the middle of the day, with evident marks of her having been strangled and ravished. The only evidence against the prisoner being that

THE prisoner above named was charged with murdering the prosecutor's wife, by name Mussummaut Kandoree, and tried for that offence at the first sessions of 1825, for zillah Rungpore. The circumstances of the case were as follow. The deceased was the wife of the prosecutor, and was 12, 13, or 14 years of age, as stated by the different witnesses; but it was by all allowed that she had arrived at the age of puberty. She was found in her house, tied by a rope round her neck to one of the beams of the roof, with her feet upon the ground, about 12 o'clock in the day; and the prisoner was seen running from the house shortly before, out of breath, and much flurried. On the neck of the deceased were observed the marks of fingers and of the nails also having been violently applied; and the witnesses deposed, that from the appearance of the body, they had no doubt a rape had been committed. The prisoner contented himself by a simple denial of the accusation.

The law officer of the Court of Circuit declared in his *futwa*, that the prisoner was convicted on violent presumption of having committed a rape, and in his endeavour to prevent the deceased from calling for assistance, of occasioning her death; and that he was

liable to suffer punishment by *Acoobut*. In this *futwa* the Judge did not perfectly agree, as he thought that the prisoner might perhaps have murdered the deceased after having committed the rape, to prevent her mentioning the circumstance; but he observed, under any *futwa*, that might have been given, from the extreme atrocity of the act, he should have thought it necessary to forward the case for the decision of the superior Court.

1826. ABHURSA'S case.

he was seen running from the house shortly before, in a state of agitation; held that this was insufficient for his conviction.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner of the charge, declared him entitled to his release.

By the Court. C. Smith, (second Judge.) "The unfortunate woman seems to have been ravished, and in the act of ravishing, to have been strangled, whether with an intent to kill, that she might not live to accuse her violator, or accidentally, with no other intent than to prevent her crying out at the time, is doubtful. Nothing can exceed the atrocity of the crime; but I agree with our law officers in thinking, that the single circumstance established against the prisoner is insufficient to prove his guilt." The prisoner was released accordingly.

GOVERNMENT,
against
AUZUM KHAN and two others.

Charge—CULPABLE HOMICIDE.

1826. July 31st. Case of AUZUM KHAN and others.

Two Burkundazes convicted of killing a thief by repeated sword wounds, when the homicide was not necessary to his seizure or custody; sentenced to two years imprisonment.

THE prisoners Auzum Khan Pathan, Emam Khan, and Unta Rajpoot, were charged with "killing a thief by sword-wounds, after the thief had fallen on the ground, the infliction of the said wounds being in no way necessary for preventing the thief's escape," and retried for that offence at the first sessions of 1826, for zillah Aligurh.

The case was in substance as follows. The deceased Khyroolla was surprised by a Chowkeedar (Unta) at night, in the act of perforating the wall of a house. He was unarmed; but two other persons, armed with swords, it was alleged, (but not proved,) were standing by, as if to protect him in the operation. Upon the alarm being given, they fled; but the Chowkeedar came up with Khyroolla, and wounded him: still however, he endeavoured to escape, and was struggling with Unta, when the Thanadar with four armed Burkundazes, amongst whom were the prisoners Auzum Khan and Emam Khan, arrived. The two latter fell upon Khyroolla, and cut him with their swords, till, between them and the Chowkedar Unta, he was killed on the spot.

In submitting this case for the orders of the Nizamut Adawlut, the Judge of Circuit accompanied it by the following observations.

"That the prisoners have been guilty of an unnecessary, if not wanton and cruel sacrifice, in the destruction of the deceased, there cannot, I conceive be a doubt; at the same time, they were in the dis-

1826.

Case of Auzum Khan and others.

charge of their official duty, and the deceased was taken in the act of violating the laws which they were engaged to support; under which, they may, perhaps, in the opinion of some, be deemed exculpated, at least so far as to be entitled to exemption from punishment. Had the death been accomplished by firearms, or any missile, the inference might be, that, owing to the distance of the offender, and his perseverance in flight, no alternative was left but to allow him to escape, or to check his progress at the risk of mortally wounding him; but as the matter stood, I cannot fancy any thing but a spirit of wanton cruelty to have prompted what could not possibly have been called for by any existing necessity. The deceased was unarmed, wounded, already overtaken by six armed men, and must have been utterly unable to elude apprehension by those so near, as thus, with their swords, to have mutilated and destroyed him. The others concerned, have been acquitted and released by the Magistrate. The prisoners Auzum Khan and Emam Khan, I would suggest, should be sentenced to at least a year's imprisonment with labour and in irons; while Unta, who was alone when he wounded the deceased in the first instance, and who is implicated only by the other two in the subsequent butchery, should, I think, be acquitted and released."

The *futwa* of the law officers of the Nizamut Adawlut acquitted the prisoner Unta, and convicted the other two of having inflicted wounds on a thief, even after he had fallen to the ground, and which occasioned his death, and declared them liable to *Deeut*, in the proportion of two thirds of the legal price of blood.

The Court (present W. Leycester) concurred in the *futwa*, and directed that the prisoner Unta should be released; and deeming the other two guilty of having cut down a thief by the infliction of sword-wounds, and of having continued to inflict sword-wounds during the fallen state of the said thief, under circumstances in no way necessary or useful for their own protection, or for the apprehension or safe custody of the thief, in no way to be palliated by any irritation or provocation at the time, a conduct ascribable solely to a wanton spirit of cruelty, and a criminal indifference to human life, sentenced them each to be imprisoned without labour and (unless necessary for their due custody) without irons for the term of two years.

The Court desired, that the Court of Circuit would instruct the Magistrates to explain to their police officers the grounds of this sentence, as well to deter similar acts of cruelty, as to avoid the forced construction, by interested persons, that a police officer is liable to punishment for any act necessary to the execution of his duty, his own security against violence, the seizure of a thief, or the due custody of his prisoner.

GOVERNMENT, *against* GHOLAM AKHEE:

Charge—DEFRAUD.

1826.
Aug. 14th.
GHOLAM AKHEE'S case.

A Tuhseeldar, convicted of making unauthorized advances to individuals in balance for one year, and supplying the deficiency in the public accounts by sums paid as revenue for the succeeding year, held guilty of embezzlement, and sentenced to one year's imprisonment for that offence.

THIS trial came on at the first sessions of 1826, for zillah Furrukhabad. The accused, Gholam Akhee, was charged with "an intent to defraud Government to the amount of rupees 2,405. 12. taken in the collections of the Pergunna of Imritpoor, for 1232 Fussily," of which Pergunna he was, at the time, Tuhseeldar on the part of the Collector of Shahjehanpore; but Imritpoor being within the jurisdiction of the Furrukhabad Court, he was tried and committed by the Magistrate of the latter station. The Judge of Circuit differing from his law officer, who declared the prisoner not guilty, referred the trial, accompanied by the following observations, which will be sufficient to shew the nature of the case.

"There were thirty-three witnesses named on the part of the prosecution, of whom twenty-nine attended; but, in the face of the evidence elicited from so many, the accused has been acquitted by the *futwa* of the charge, and declared entitled to his release. I do not concur in this opinion, and refer the proceedings accordingly. That the man has been guilty of fabrication with intent to defraud, I admit has not been legally proved; and so far he should, I think, be acquitted of the charge, in the full extent of its wording: but that he has been (to say the least of his conduct) culpably regardless of his official obligations, and has had recourse to unjustifiable, if not dishonest means of extricating himself from a dilemna, in which, but for his own dereliction of duty, he never would have been involved, is palpably evident. I conceive the fact to have been as stated, more or less explicitly, in the depositions of several of the witnesses, a loan on the part of the Tuhseeldar to certain individuals in balance for one year, with the view of serving them, perhaps, and at the same time of finding favour to himself in the eyes of the Collector, by thus far reducing the arrears of his Pergunnah. A neglect of repayment on the part of those he had so assisted, was followed by a deduction and detention from the revenue of the ensuing year, to the amount of what had been thus paid, by himself, in fact to the Government, ostensibly as that of the year preceding. If this be admitted as the probable state of the case, the offence stands so reduced as scarcely to require a penalty beyond what the authority under whom the offender served is competent to award. He has been dismissed from his office; and this, with the payment of any existing deficiency incident upon his irregular proceedings, may perhaps be considered as a sufficient atonement. If so, I would recommend that he be released; but not, as the *futwa* requires he should be, as an act of justice, claimable under his acquittal, but as one of grace, in consideration of what he has already forfeited by the misconduct of which he has been manifestly guilty."

1826.

GHOLAM AKHEE'S case.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner of the charge, declared him entitled to his release.

By the Court. C. Smith, (second Judge.) "I think this is embezzlement. He did not apprize the revenue authorities of his having advanced money in 1231, and he had no right to appropriate to the payment of such advances, the money that was paid to him as revenue in 1232. Such a plea should not be listened to for a moment. I would imprison him for one year without labour and irons, in the civil jail.

The prisoner was sentenced to be confined for one year accordingly.

1826.

Aug. 14th.

MUSST. DHUNKOOWUREE'S case.

GOVERNMENT,
against
MUSST. DHUNKOOWUREE.

Charge—PROCURING ABORTION.

It is irregular, under the Court's circular order dated the 31st of December 1824, for police officers to prosecute an enquiry into a case of abortion, though the enquiry originated in the discovery of a murdered infant; the one case having no connexion with the other. On conviction of destroying a fœtus (the woman not being quick with child) the Court of Nizamut Adawlut deemed the punishment

THE prisoner Musst. Dhunkoowuree was charged with procuring abortion, and tried for that offence at the second sessions of 1826, for zillah Mirzapore. The facts of this case were as follow. On the morning of the 14th of February 1826, a person named Bhinka Bufatee, an inhabitant of the village of Doobar, having occasion to go to the side of a stream running close by the village, there found the body of a child, half buried in the mud. Information of the circumstance having been immediately conveyed to the Thana, the police officer went to the spot, and held an inquest; and suspicion falling on the prisoner, who was a widow, and reported by some of the villagers to have been pregnant, she was apprehended, and shortly after confessed having procured the abortion of a fœtus in her womb, she having been in a state of pregnancy for four months. Before the Court of Circuit, she admitted this confession; and there also stated, that she had rubbed her belly, which caused her to miscarry, and that she had thrown the fœtus into the river. The body of the child, found in a hole by the witness Bhinka, was fully formed, and the prisoner from the first denied its having been the one she had thrown into the river; which was sufficiently evident from the time she had been gone with child, which she at one time stated to have been four months, and at another, one month. In either case, the Judge of Circuit observed, there could have been no life, strictly speaking, in the fœtus; adding, that he was not satisfied that the prisoner did intentionally destroy the fœtus in her womb; that whether she rubbed her belly with the purpose of causing an abortion, or from pain, was not proved; that it was the province of justice to lean to the safer side, by giving the most favourable construction to her confessions, with the exception of which there was no evidence against her, or of her having been with child; and that, under all the circumstances of the case, he was of opinion she ought to be released.

1826.

MUSST. DHUNKOOWURRE'S case.

The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner Mussummaut Dhunkoowuree of having caused an abortion of her womb, the abortive produce being yet imperfect and without life, and declared her liable to discretionary punishment by *Acoobut* for the offence.

of six months imprisonment, which the accused had already undergone, to be sufficient.

By the Court. W. Leycester, (chief Judge.) "The Moohummudan law making this offence a misdemeanour, I know no good reason why we should not treat it as such. I doubt, however, whether it would be treated as a misdemeanour by English law. The prisoner's confession at the Thana (it had been prohibited, however, to the police officers to interfere in such cases without previous orders from the Magistrate) is clear and distinct as to the intention of procuring an abortion; but I think the imprisonment sustained is adequate, and I would enlarge the prisoner now on that ground. With regard to another point, we should notice, if only as a memorandum to the Circuit Judge, that he has passed over in silence a neglect by the Magistrate in not noticing a breach of duty by his police people, who acted in opposition to the orders of the Nizamut Adawlut, contained in their resolutions of the 10th November 1819, rendered circular by the Court's letter of the 31st December 1824. It is stated by the police Darogha, that he acted under the Magistrate's orders of the 12th March 1825. We should call for this order, and if in opposition to our circular letter, require an explanation from the Magistrate; and if not contrary, the Magistrate should call on his police officers to explain their infraction of this Court's order."

W. Dorin, (fourth Judge.) "Our law officers have clearly viewed as an offence the act they find in evidence, viz. causing an abortion, though the abortive produce was as yet imperfect and without life; and to the best of my recollection, Circuit sentences have varied from one to three years imprisonment in such cases. I think there is sufficient to convict the prisoner of the fact charged, and would view it as a misdemeanour; but she has already suffered six months in imprisonment, which seems to me enough. There is no sufficient proof of previous discernible pregnancy, so as to lead to the presumption that she destroyed any thing within the pale of existence."

The following sentence was ultimately issued by the Court, (present W. Leycester and W. Dorin.) "The Court observe, that though the present case apparently originated in a local investigation, by the Darogha of Thana Lalgunge, in consequence of the body of a newly born infant of full growth having been discovered near the village of Doobar, and of suspicions arising that a murder had been committed there, still, that the present case (that body not having been found to have any connexion with it) was a case of enquiry by the Darogha into a charge of producing abortion, on the Darogha's own authority, and without special orders from the Magistrate, and contrary to the circular orders of the Nizamut Adawlut, under date the 31st of December 1824. The 4th paragraph of those orders describes the objections which the Court entertain against enquiries nto cases of abortion so originating; and the Magistrate of Mirzapore

1826.

MUSST. DHUNKOOWUREE'S case.

is desired to caution his police officers as to their future strict observance of those orders. The Nizamut Adawlut are unaware of the purport of an order (the *purwana)* of the Magistrate of Mirzapore, quoted by the Darogha of Lalgunge, in his report of the 16th of February last, and stated to bear date the 12th March 1825. If it had any relation to charges of causing abortion, the Magistrate will send a copy of it for this Court's perusal." The Court of Nizamut Adawlut at the same time ordered that the prisoner should be released.

1286.

Aug. 23d. Case of BHONDOO LAL and others.

GOVERNMENT, *against* BHONDOO LAL and two others.

Charge—FORGERY.

A Vakeel being in three cases convicted of altering or causing to be altered the value of a number of stampt papers, sentenced to be exposed by *Tushheer*, and to be imprisoned for ten years.

THESE trials came on at the Patna monthly sessions for February 1826. The prisoner Bhondoo Lal, who was a Vakeel in the Sudder Ameen's court, was charged with having altered, or caused to be altered, to a higher value, in three cases, (trials No. 5 of calendar, and No. 1 and 2 of the supplementary calendar for February,) numerous stampt papers, and having issued the same, knowing them to be such fabrications, and obtaining the fictitious value, and thus defrauding the Government; and the prisoners Soorut Lal and Digumber Pande were charged with being aiders and abettors in the forgery with the first named prisoner, in trial No. 2. of the supplementary calendar.

The prisoner Bhondoo had been committed to take his trial at the city sessions for February, on two charges of forgery, one of which, the Court of Circuit were of opinion, ought to be annulled, and divided into two distinct cases, which were accordingly included in the supplementary calendar for that month.

In the case, No 5 of the original calendar, it appeared in evidence, that the prisoner Bhondoo Lal instituted a suit in his own name on stampt paper, which paper had been evidently altered from one rupee, the original value, to 16 rupees, and by giving in a *Boznama*, obtained the fictitious value of this paper from the Judge's treasury. It was not proved that the suit was fictitious; but the prisoner stated, that he purchased the paper from Sohun Lal's brother, Soorut Lal, which he was unable to prove, and it was established by the evidence of the stamp vender and Darogha, that the paper in question was sold (as written on the back of it) to a person calling himself Rughoonauth, on the 16th of July 1822; and on referring to their books, it appeared that only one paper was sold to Rughoonauth on that day, the value of which was one rupee.

In case No. 1 of the supplementary calendar, it appeared that the prisoner Bhondoo Lal purchased eighty-three stamps in his own name from the stamp venders, all of which had been since altered to a higher value. The prisoner admitted having filed these in Court,

1826.
Case of Bhondoo Lal and others.

but alleged that some of them were purchased by Soorut Lal in his name; in attempting to prove which, however, he entirely failed. On comparing the indorsement on the back of these papers with the stamp vender's books, it was clear, that they must have been altered to a higher value since they were purchased, as no paper of the value they had borne at the time of the trial appeared to have been sold to the prisoner on those dates; and it followed, that he must have either altered or procured their alteration to a higher value for his own advantage, he having levied the fictitious value of the papers from his clients.

In the case No. 2 of the supplementary calendar, the prisoner Bhondoo Lal admitted having written the plaints, and filed in Court in various cases, in which he was Vakeel, four hundred and ninety-one stampt papers, but which, he alleged, he purchased from the prisoners Soorut Lal and Digumber Pande. The whole of these papers had no doubt been altered to a higher value, and appeared from the evidence and books of the stamp Darogha and vender, to have been sold to the prisoner and to Sohun Lal and others, when they bore the smaller value. He was not able satisfactorily to establish that he procured the forged stamps through Soorut Lal and Digumber Pande, as alleged by him; and there was no direct evidence against them; although, from the circumstance of the former being a brother, and the latter a peon of Sohun Lal, with whom the prisoner Bhondoo Lal was no doubt concerned, and who had been convicted of taking part in forgeries similar to these, they were, in the opinion of the Judge of Circuit, employed in disposing of forged stamps. The circumstantial evidence, he added, against the prisoner Bhondoo Lal, in the above cases, arising from the number of forged papers, many of which he purchased himself, and all of which he filed in Court, the connexion which he admitted existed between himself and Sohun Lal, who had already been convicted by the Nizamut Adawlut, and his being unable to assign a satisfactory reason for having procured stampt paper from others than the authorized venders, left no doubt in his mind of that prisoner's guilt; and he therefore concurred in the *futwas* of his law officer, which convicted him in each case on strong presumption of fraudulently altering or causing to be altered stampt papers to a higher value, and uttering the same knowing them to be such, for which offences he was declared liable to discretionary punishment.

The prisoners Soorut Lal and Degumber were acquitted by the Circuit *futwa*. As he considered the prisoner Bhondoo Lal deserving of a more severe punishment than he could inflict, the Judge of Circuit, with reference to Regulation XV. of 1814, sentenced the said prisoner to thirty rattans, *Tushheer*, and fourteen years imprisonment in banishment, in one of the cases; to fourteen years imprisonment in banishment in each of the other two cases, and referred the proceedings for the final orders of the superior Court, who might, he observed, probably consider the prisoner sufficiently punished by seven years imprisonment in each case, making in all twenty-one years, with stripes and *Tushheer*. The other two

1826. Case of BHONDOO LAL and others.

prisoners he ordered to be released. He remarked in conclusion, that the cases referred were connected with several other cases of forgery of stampt paper, which had been unavoidably postponed, but which would also be transmitted for the consideration and final orders of the superior Court, with as little delay as possible.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Bhondoo, in No. 5 of the calendar, of having altered or caused to be altered the sum upon a piece of stampt paper, and thereby obtained sixteen rupees from the Court, and convicting the same prisoner, in case No. 1 of the supplementary calendar, of altering or causing to be altered the sum of some pieces of stampt paper, and convicting the same prisoner, in case No. 2 of the supplementary calendar, of the same offence, declared him to be liable in all three cases to *Tazeer*, the punishment to be consolidated agreeably to the rule of *Tudakhool*.

The Court of Nizamut Adawlut, (present C. Smith and A. Ross,) concurring in the *futwas*, sentenced the prisoner Bhondoo, on account of all three cases, to be exposed in the manner called *Tushheer*, and to be imprisoned with labour for the term of ten years. The Court observed, that the remaining two prisoners in the case No. 2 of the supplementary calendar, had been acquitted and released by the Court of Circuit*.

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* The following information, contained in a letter from the Judge of the city of Patna, to the address of the Superintendant of Stamps, dated the 13th of June 1825, is calculated to afford some idea of the extent to which practices similar to those which formed the subject of the above trials had been carried, and the loss to which Government had been consequently subjected in this branch of the public revenue. "I received charge of this city in the latter end of March 1825; and, so early as the commencement of April, noticed the prevalence of a species of forgery, by which stamps of inferior value are made to bear a greater value, and in such a fictitious shape are used to file as original plaints, plaints of appeal, &c. As it appeared to be highly important that this nefarious plan should be thoroughly sifted; that the forgers, aiders, and abettors should be brought to justice, (measures which in my opinion offered the only sure means to the prevention of the offence in future,) I entered at once into the investigation. In the progressive steps of the investigation, I discovered, that the files of the Sudder Ameens, Register, Judge, and Judges of Appeal were all infected, and that the whole required to be narrowly searched. I in consequence determined to commence with the lower court, taking the files severally in hand, so as to allow time to the stamp venders to give in such reports as appeared necessary, and to prevent this investigation materially interrupting the current business of the civil and criminal courts. Upon an examination of the suits actually filed and undecided, in the Moulovee Sudder Ameen's court, I have discovered thirty-six forged original plaints, and thirteen forged *Vukalut Namas*; and in tracing the utterers of the forgeries, I have brought the whole home to one Vakeel, by name Bhondoo Lal, who by his defence has thrown considerable further light upon the subject, and furnished me with information regarding his associates. The stamp venders are now compiling a report on the suits upon the file of the Register previous to their entering upon the file of the Judge, which, as it embraces appeals from all the lower courts, will of course contain the greatest number, and in which, upon a cursory view, I have already marked 435 forgeries. Mean while it chanced to occur to me, that the forgers, who would naturally seek the most advantage-

MUSSUMMAUT AGURTEE, *against* HURRUK SINGH.

1826. Sept. 1st. HURRUK SINGH'S case.

Charge—MURDER.

A sepoy, convicted of causing the death of a man whom he had seized as a *baigar*, by beating him with a stick and his fists: sentenced to three years imprisonment.

THE prisoner Hurruk Singh was charged with beating Sheodut, the prosecutrix's husband, which caused his death; and his trial for that offence came on at the Benares monthly sessions for May 1826. The facts of the case were as follow.

The prisoner, in company with another sepoy named Deenaram, who was also committed, had seized the deceased and another person named Ramdial, who was the only eye-witness to the fact, as *baigars*; and Ramdial deposed, that the prisoner gave the deceased several blows with a stick and his fist, because he objected to proceed. Deenaram then proceeded with him (the witness), leaving the deceased and the prisoner behind, the latter of whom soon after rejoined them without the deceased. Shunker and Sheikh Toorab, two Burkundazes, deposed, that the prisoner brought the deceased to their *chowkee*, saying, he was unable to proceed. The deceased then complained that he was in great pain, or very unwell, and immediately expired. A slight contusion was apparent on the right side of his forehead, or temple; and just after his death, blood appeared to have issued from his nose. The prisoner admitted on trial, that he had seized the deceased as a *baigar, or coolee, but denied that he*

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ous let for uttering their paper, had possibly taken advantage of section 11, Regulation XIII. 1810, and had made fictitious prosecutions on altered stamps with a view to defraud the Honourable Company of the institution fee. I accordingly addressed the Court of Appeal, requesting the Judges of the Court to furnish me with any cases of *Razeenama Baznama* in suits which were filed during the years 1822-23; and in their reply to my letter, the Judges of the Court of Appeal furnished me with four suits, all of which had been brought to decision by *Baznama*. I immediately proceeded to the investigation, in the progress of which I have established that the whole four are fictitious; that the stamps of the plaints were originally of one rupee in value, have been altered so as to bear a superior value, two of them to the amount of 250 Rs. and two of 350 Rs. and that the gang concerned in filing them obtained the sum total of their apparent value, or 1200 rupees, from the treasury of the Court of Appeal. But this second part of the investigation has been attended with very beneficial effects, for it has brought on the apprehension of the whole gang concerned in these forgeries. I have already noticed the detection of Bhondoolal, a Vakeel of the Moulovee's court, to whom I may now add Goher Ali, a Vakeel of the Register's court, Sohunlal, Somirthlal, Kowlanath Kaeths and brothers, and the former a Mokchar about the courts, Yaralli and Khoda Bukhsh, the nominal plaintiffs, and others, whose names, until I proceed further in the search, it is not my wish to mention. It is impossible for me to make even a guess at the extent to which this offence has been carried, or of the amount to which the Honourable Company's stamp revenue has been defrauded. I, however, regret to acquaint you, that it has been hinted to me, that this altered stampt paper has been circulated, and altered throughout the division, and a quantity sent down to the Presidency, a point which, as the investigation progresses, will doubtless be elucidated.

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HURRUK SINGH'S case.

had beaten him. Before the Magistrate, he and his companion Deenaram, accused each other of having beaten the deceased.

The law officer of the Court of Circuit acquitted the prisoners from want of proof. The Judge did not coincide with the finding, as far as it related to Hurruk Singh; but approved of the acquittal of Deenaram, as Ramdial had stated that he was in no way concerned in beating or ill-treating the deceased. It was, he thought, clear from the testimony of the two Burkundazes, that when the prisoner brought the deceased to their *chowkee*, there was a mark of violence on his forehead, and of his having been beaten. The state the body was in when brought to the Surgeon, he observed, prevented his ascertaining the probable cause of the death of the deceased, and consequently it was left to conjecture; but there was strong ground to presume that the ill-treatment the prisoner inflicted was the cause of it. The deceased, he added, was taken from his occupation, and was not probably very ill at the time; but even supposing he was, the ill-treatment he received from the prisoner's hands was sufficient to have accelerated his death. He was therefore of opinion, that there was ample proof to warrant his dissenting from the *futwa*, and for his making the reference with respect to Hurruk Singh.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner of having so beaten the husband of the prosecutrix as to cause his death, declared *Kissas* and *Deeut* to be barred by the nature of the proof, and *Tazeer* to be incurred.

By the Court. W. Leycester, (chief Judge.) "I concur in our convicting *futwa*, and would sentence the prisoner to three years imprisonment. The prisoner's wife is asked, as her husband was in good health, why he objected to carry the prisoner's bundle; to which she says, not that it was no duty of his, and that he did not choose to do so, but that the bundle was heavy; establishing that the infamous practice still exists of sepoys pressing the people on the side of the public roads to do them service, be it with or without pay. I would bring this case to the notice of Government, with the object that measures may be taken to put down effectually these barbarous practices."

C. T. Sealy, (third Judge). "I concur in the sentence proposed above, but am against sending the case up to Government."

C. Smith, (second Judge.) "I concur, seeing no reason to doubt the evidence of Ramdial, or the violence having caused the death of Sheodut, though not intentionally. The insolent oppression of seizing the two men as *baigars* is a great aggravation. I propose five years, therefore, instead of three. I see no use in stating the case to Government; the practice is always prohibited and always followed. The sepoy does it at his peril, as would any other individual."

W. Dorin, (fourth Judge.) "I think the sentence of five years a preferable one in this case. There seems quite sufficient evidence for conviction of having caused the death of the deceased by ill-treatment, and beating him as a *baigar*, pressed by the prisoner Hurruk Singh sepoy, and one of his comrades. The prisoner may not have

meant to kill. Two Judges being against a reference to Government, that question must fall, I suppose. I do not revive it."

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The fourth Judge having offered no opinion as to the propriety or otherwise of submitting the proceedings to Government, the case was referred for the consideration of the fifth Judge; who concurring with the third Judge as to the propriety of issuing a sentence of three years imprisonment, and as to there being no necessity of making a reference to Government on this occasion, the above sentence was issued accordingly.

BUSUNT LAL, *against* HUNSNATH.

1826. Sept. 4th. HUNSNATH'S case.

Charge—MURDER.

Case of a boy aged fourteen, murdering a boy aged twelve, for the sake of his ornaments. Sentence, imprisonment for life.

THE prisoner was tried at the 2d sessions of 1825, for zillah Sarun, on the charge of having murdered a boy named Dhurpnarain, son of the prosecutor, for the sake of his ornaments. It appeared from the evidence adduced in this case, that the son of the prosecutor (a little boy aged about twelve years) went out with the prisoner, also a boy, of about fourteen years old, to gather mangoes; and, being missed, his body was found, after some search, the next day in a neighbouring grove, with a rope tied tightly about the neck, from which it appeared that the deceased had died by strangulation. The prisoner appeared at first to have denied any knowledge of the fact, but subsequently to have acknowledged that the deceased had accompanied him to gather mangoes, and had been killed by falling from a tree. He afterwards delivered up the ornaments of the deceased, which he said that he had retained from the fear of being accused of murder. He also told a similar story before the Court of Circuit. Concurring with his law officer in finding the prisoner guilty of murdering the deceased for the sake of his ornaments, the Judge of Circuit recommended, that, in consideration of his youth, he might be imprisoned for life, or for a long period, as might appear best to the Court.

The *futwa* of the law officers of the Nizamut Adawlut convicted the prisoner of the murder of Dhurpnarain for the sake of his ornaments, but declared punishment to be barred by the non-age of the prisoner, stating, however, subsequently, in reply to a question of the Court, that, at the discretion of the ruling power, the prisoner might be sentenced to temporary imprisonment *Tazeerun* and *Tadeebun*.

W. Dorin, (fourth Judge.) "I think there is sufficient proof of the fact of murder against the boy Hunsnath. The deceased seems to have been a boy a year or two younger than Hunsnath, and murdered for his ornaments. From the terms of the *futwa* of our law officers, as well as from an explanation they verbally gave me as

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HUNSNATH'S case.

to the second *futwa*, (viz. that they did not contemplate so heavy a sentence as perpetual imprisonment,) I think a second Judge requisite. I am for a sentence of perpetual imprisonment, remitting the capital part on the ground of non-age. The case of Budlooah, vol. i. p. 115. of the printed Reports, is in point. In cases of murder we have general power, whatever be the *futwa*.

The Chief Judge (W. Leycester) concurring in the above opinion, considering the prisoner to have been fully conscious of the crime committed, and in no way entitled to exemption from punishment, he was sentenced to perpetual imprisonment in the jail of Allipore.

1826.
Sept. 7th.
MOOTEEA *alias* GUNGA DHOBEE'S case.

GOVERNMENT,
against
MOOTEEA, *alias* GUNGA DHOBEE.

Charge—MURDER.

The prisoner, being apprehended on the charge of murdering his wife, confessed at the Thana having killed her in the act of adultery. The *futwa* of the law officers of the Nizamut Adawlut, find the fact to be justifiable homicide, but the Court overruled this *futwa*, and sentenced the prisoner to perpetual imprisonment; he having denied his Thana confession, and pleaded ignorance as

THE prisoner Mooteea, *alias* Gunga Dhobee, son of Hursookha, was charged with the murder of his wife on the 4th of March, 1820, and tried for that offence at the 1st sessions of 1826, for zillah Agra. From the confession of the prisoner at the Thana, the circumstances of the transaction would appear to have been as follow. He retired to rest upon the same *charpaee* with his wife, and waking in the night, beheld her in the act of criminal intercourse with one Purma, who fled on being discovered. He immediately killed his wife with a sword, and fled across the river Chumbul, where he remained from the time of the occurrence (1820) for five years, after which he returned, and was seized on the banks of the Jumna. Before the Magistrate and the Court of Circuit he declared, that he awoke in the night, and found his wife murdered, and fled, lest he should be deemed her murderer, which he denied being. This, the Circuit Judge observed, was unsupported by evidence or probability: and there was, he conceived, no doubt whatever that the Thana statement was the correct one. Upon this the prisoner was convicted of the murder. But it were unfair, he thought, to accept a part of the confession, and reject the rest; and the prisoner, he added, ought certainly to have the full benefit of what appeared in it, in mitigation of his sentence. Under the circumstances of the case, he considered a year's imprisonment a sufficient atonement for the act which the prisoner had acknowledged himself to have committed. The attempt on the part of his parents to establish his former liability to fits of insanity, the Judge did not deem worthy of notice.

The *futwa* of the law officers of the Nizamut Adawlut, finding that the prisoner Mooteea, commonly called Gunga, killed his wife on detecting her in the act of adultery with a sweeper named Purma, declared *Kisses* and *Deeut* to be barred, and the prisoner to be entitled to his release.

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to the manner of his wife's death, both before the Magistrate and the Court of Circuit.

By the Court. W. Leycester, (chief Judge.) "I agree in our *futwa*, and, on the grounds therein stated, would discharge the prisoner."

C. Smith, (second Judge.) "I differ from the first Judge. I do not give the slightest credit to the prisoner's assertion, that he killed his wife on surprising her in adultery: it is not even hinted at by any witness that such was the cause. He barbarously murdered his wife; and conscious of guilt, and of his deserving to be hanged, he absconded, and, after six years, being apprehended, has the effrontery to say that he killed her because he found her in the act of committing adultery with a sweeper, who was her paramour. His flight, and the circumstances under which he fled, would, without his confession, raise a violent presumption of his guilt. It is clear, that if this practice of admitting the bare assertion of a prisoner, that he killed his wife, or the paramour of his wife, because he found them together in adultery, is adopted, every married man who hates his wife or his neighbour, has only to murder them secretly, and to say he found them together in adultery, to enjoy complete impunity from the law. It is not the Moohummudan law rightly understood, nor is it consistent with common sense or reason. This I think a worse case even than that of Seespaul Aheer, acquitted against my opinion by the 1st and 3d Judges, on the 25th ultimo. By a worse case I mean, that the justification is even, if possible, more improbable in this case than in the other. As in that case I concurred entirely with the Circuit Mooftee, so do I in this; and I am of opinion, that the prisoner should be hanged. In the case of Wood, accused of murdering his wife, the prisoner made this very plea; but the Judge observed to the jury, that the alleged infidelity of the prisoner's wife could not form a ground of justification, unless it was proved that he found Dunn (the murdered man) in a criminal intercourse with his wife, at the moment he committed the act; but there was no evidence to prove that, except his own declaration, which could not be received." The trial took place at Nottingham, on the 14th of March 1826.

W. Dorin, (fourth Judge.) "The proof against the prisoner, independently of all confessions, is, that one night in the month of Cheit, six years ago, he and his wife slept in the same room, they being the only inmates of the house; that in the morning the wife was discovered on her *charpaee*, lying dead from sword wounds; and that the prisoner had fled. He has now (after six years) been discovered and taken. This, in my mind, induces a strong presumption that he murdered his wife. His alleged confession at the Thana, that he killed his wife, finding her in adultery with a paramour, is totally disclaimed by him before the Magistrate and on the trial, where he says, that he made no such confession at the Thana; but that, when the affair occurred, he had been drunk over night; that on waking in the morning, he found his wife lying murdered, and fled for fear of being charged with it. Had there been no evidence against the prisoner but the Thana confession, or rather a similar confession made before the Magistrate, or on the trial, (for Thana confessions are not worth much,) I think it would have

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been good Moohummudan law, good sense, and I believe good English law, to take the whole confession as it stood, and not any insulated part of it. But I think the sudder *futwa* has not come to a just conclusion on the evidence and facts of the case. The law, I take it, requires no alteration. We are not bound to believe an absurd story, because a prisoner tells it. I do not mean that the Thana story in this case was an absurd, or a very improbable one; but (as I observed before) the prisoner disclaims it, and tells a different story; and there is, in my mind, strong presumption that the affair happened otherwise than the Thana story has it. It is presumable, that in a fit of drunken passion or jealousy, the prisoner killed his wife. Deeming him guilty of murder on strong presumption, I would go against the *futwa*, but would only pass a sentence of imprisonment for life. The case quoted from an English newspaper, is, I take it, (as far as the Judge's words go,) not very accurately reported. But in that case, the plea on the trial is *jealousy*, not adultery at the moment; and the whole complexion of the case points to such being the right view of it*."

Hawkins, p. 604, § 5.

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* The following is a copy of the report alluded to by the second Judge, as having been extracted from the English newspaper.

MIDLAND CIRCUIT. NOTTINGHAM, MARCH 14.

MURDER.

(BEFORE MR. JUSTICE LITTLEDALE.)

Samuel Wood stood indicted for the wilful murder of his wife Frances Wood, by striking her repeatedly on the head with a hammer. The prisoner was arraigned on Monday; but he became so ill that he fainted, and the learned Judge put off the trial till this day, when the prisoner was again placed at the bar. In answer to a question from the Judge, he said, that he was sufficiently recovered to take his trial. The following is the testimony of the principal witnesses:—

Elizabeth Burrows, aged 15, examined. In November last, I lived in the prisoner's house with my uncle, who lodged there. I was at home on Wednesday, the 16th of November, when the prisoner and his wife came in: it was about eight o'clock at night; I gave them their supper: the prisoner's three children were in bed. After supper, the prisoner and his wife drank rum and water together in a very friendly manner. I went to bed about ten: the prisoner desired me. Mrs. Wood said, I had better sit up till my uncle came home. I then went up stairs, and left the prisoner (Wood) and his wife below. A short time after I went to my room, the prisoner came up and tried if the door was fast. Mrs. Wood asked him why he did so. He said for "nothing." I could hear them talking, but could not understand what they said. Shortly after that, I heard Mrs. Wood say, she would go for a constable, and in five minutes afterwards I heard her cry out "Murder!" I then went down stairs, and found her lying on the floor: he was across her, and kneeling on the floor. Mrs. Wood had the coal-pick or hammer head in her hand; and Mr. Wood had the handle part in his. The hammer produced is the instrument made use of. On entering the room, I said, "Oh, master, what are you doing?" He wrenched the hammer out of his wife's hand, and hit her three times on the head with the iron part of the instrument. Before I got out of the house, she could not speak. I ran out of the house, crying murder. He followed me for several yards with the coal-pick or hammer in his hand: his coat and waistcoat were off. He went back to the house: I went to George Hardy, a neighbour, and clung to him. I returned to the house in ten minutes, and found it full of people. The deceased lay upon the floor, near the fireplace, in the same spot as when I ran out. I found her quite dead: the coal-pick was under her head.

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A. Ross, (fifth Judge.) "The facts established on the trial of the prisoner, were, I think, sufficient without his confession at the Thana,

Cross-examined by Mr. Williams. I was a fortnight or three weeks lodging in the house; I was never there before; I do not know that my uncle used to go there before; I never went there to look for him; I went there one day by the desire of my aunt. I never saw Dunn in Wood's bedroom, until he went to sleep in the top room, and then he was obliged to go through it to get to his own. I was not always with him. I never saw him take any liberties with Mrs. Wood, nor Mrs. Wood with him. I still live with my uncle. I never heard him quarrelling with Wood. I never heard the latter complain that my uncle took liberties with Mrs. Wood. Whenever he spoke to Mrs. Wood, he would never let me hear him. I don't know that it was any thing about my uncle.

John Simpson, examined. I was walking near the Milton's head on the night in question. I heard the cry of murder several times. I went towards the place whence it proceeded. A girl came out from the prisoner's house; he followed her immediately with a coal-pick in his hand, and was without his coat and waistcoat; he pursued the girl seven yards, and then ran back again with the coal-pick in his right hand. He closed the door after him. I got as close to the door as I could. I heard a knock given, which appeared to be hollow. I heard something drop immediately after the knock was given; it was like the noise of a hammer; the prisoner then came to the door, and ran away. I pursued him, but another man, named Simpson, took him about a yard off, and I assisted in conveying him to the police office. He appeared as if he had been drinking rum. I asked him if he knew what he had done. He said, "Good Lord, what could I do, when I caught them in the fact." He wanted to go back for his clothes, but he was not allowed. Cross examined. He did not say what fact it was, nor any thing that led me to understand what it was.

Mr. William Barnes, clerk to Mr. Enfield, the town clerk, said he was present when the prisoner was brought before the Magistrates. What he said was taken down in writing.

The examination was then read: in it the prisoner acknowledged having inflicted the blows which caused his wife's death; but he said he was not in his right mind at the time, as when he went in, he discovered Dunn with his wife, and had positive proofs of her infidelity; and not only then, but on the Saturday and Tuesday preceding. When he gave her the blows, he did not intend to injure her.

The Rev. William Lund, chaplain to the gaol, said he saw the prisoner the day after he was committed. He showed him a wound upon his right or left arm, which appeared to have been recently inflicted with an iron instrument. He had some scratches on his face. He told the same story about the infidelity of his wife. He said it was she who wounded him on the arm.

Mr. William Parker examined. I am an auctioneer. I saw the prisoner two or three days before his wife's death. He applied to me to sell the furniture and goods; he said he had reason to be jealous with his wife about Dunn; he was therefore determined to dispose of his house, and quit his wife. He expressed himself rather incoherently, and I considered him a little deranged on that subject. I objected to have a sale until a bill of sale was made out. I sold the things subsequently. I did not hear him give orders to Mr. Shelton, the attorney, to commence an action against Dunn, for his criminal conversation with his wife.

William Wood examined. I was one of the constables that sat up with the prisoner the night he was taken. I had some conversation with him about what happened. He said to me several times, "Mr. Wood, this is a very bad job." I said to him, "Samuel, it is." He said, "It is very bad; it is unredeemable. If I lose my life, I am not obliged to lose my soul." The next day he enquired if Dunn was at his house. I said to him, "Samuel, do you know what you said about Dunn." He answered, "Yes, it is quite true."

Several respectable tradesmen attended, and gave the prisoner a very good character for humanity and mildness of disposition.

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to raise a violent presumption that he murdered Musst. Purmeea his wife. On his trial, the prisoner denied his confession at the Thana altogether; and in defence of himself, merely said, that on the night Musst. Purmeea was killed, he and she slept in the same house on two *charpaees*; that when he awoke in the morning, he saw her lying dead; and that he, upon seeing this, being afraid, immediately fled. I agree with the 2d and 4th Judges in the conviction of the prisoner, of the murder of his wife; and concur in the sentence of imprisonment for life, proposed by the 4th Judge. I am induced to give my vote for this sentence rather than for that of death, proposed by the 2d Judge, because I have observed, that in cases of murder of equal atrocity with this, imprisonment for life has been deemed by the Court a punishment sufficiently severe to satisfy justice. I would word the sentence thus. "The *futwa* of the law officers of the Nizamut Adawlut, finding that the prisoner Mooteea, commonly called Gunga, the son of Hursookha washerman, confessed at the Thana, that he killed his wife on finding her in the act of adultery with a sweeper named Purma, declares *Kissas* and *Deeut* to be barred, and the prisoner to be entitled to his release. The Court, on a consideration of the whole of the evidence adduced on the trial, deeming the prisoner guilty of murder, sentence him to imprisonment with labour for life in the jail at Allipore." Sentence to that effect was issued accordingly.

The prisoner, in his defence, said that he was not his own man (in his right mind) when he committed the act: he was actuated by jealousy, but he had no intention of injuring his wife.

The learned Judge summed up the evidence, observing to the jury, that the alleged infidelity of the prisoner's wife could not form a ground of justification, unless it was proved that he discovered Dunn in a criminal intercourse with his wife at the moment he committed the act; but there was no evidence to prove that, unless his own declaration, which could not be received. With respect to his talking incoherently, that did not constitute insanity: the infidelity of his wife was therefore no excuse for using so deadly a weapon. It appeared to him that there was nothing to extenuate or bring down the crime of murder to that of manslaughter; and he was of opinion, that they would be discharging their duty in finding him guilty; but he should leave the case before them to be judged according to the evidence.

The jury, having consulted for a short time, found the prisoner guilty.

The learned Judge then passed sentence of death on the prisoner, who seemed calm and resigned whilst the Judge was advising him to prepare himself for another world, as there was no hope of pardon for him in this.

The sentence is to be carried into execution on Thursday (this day).

MUSST. JYMUNEE,
against
KUMUL MUSSHALCHEE.

Charge—MURDER.

1826.
Sept. 16th.
KUMUL MUSSHALCHEE'S case.

THE prisoner Kumul was tried at the monthly sessions of 1819, for the suburbs of Calcutta, on the charge of having committed a rape on the body of the prosecutrix. He was declared to be not convicted by the *futwa* of the law officer of the Court of Circuit; but the Judge, deeming him guilty, made a reference on the subject to the Court of Nizamut Adawlut, accompanied by the following observations.

"The *futwa* acquits the prisoner of actually committing the crime, but convicts him of the intention, and for that declares him liable to *Tazeer*. I disagree entirely. Three witnesses swear to having seen the prisoner in the actual commission of the crime of rape on the body of the prosecutrix, in the open face of day, and on the public road: they also depose to his having afterwards acted in a most disgraceful and brutal manner towards her. The *Kyfeeut* of the police Darogha shews, that the crime was not only committed, but witnessed by a crowd of people. The prosecutrix was taken from the house of the prisoner by the police officers, where she was evidently under restraint. The prisoner, so far from proving that the prosecutrix was his mistress, has failed to prove common acquaintance with her. She is not, what is something extraordinary, proved even to be a common woman; but, on the contrary, a woman of very decent livelihood, and the prisoner a drunken, violent vagabond. He was certainly very drunk at the time he committed the crime; but that is no palliation of his offence. For the crime, for his after conduct to the prosecutrix, for the outrage which has thus been offered to the public, and to every thing that has a tendency to decency and morality, I consider the prisoner deserving of the severest punishment the law can visit him with." The prisoner was convicted by the *futwa* of all the law officers of the Nizamut Adawlut, of maltreating the prosecutrix, with intent to commit a rape, and declared liable to *Tazeer*; and the Court of Nizamut Adawlut (present J. Fendall and S. T. Goad) not concurring with the *futwa*, but being of opinion that the prisoner was convicted of the crimes of assault and rape, sentenced him, the said Cumul, to receive thirty-nine stripes of a *corah*, and to imprisonment for fourteen years.

A petition having been presented to the Court of Nizamut Adawlut for the release of a prisoner formerly sentenced by that Court, the majority of the Judges held, that they had no power to interfere with the sentence, on the ground of their entertaining a difference of opinion as to the merits of the case, or as to the quantum of punishment awarded.

On the 30th of August 1826, Mookta Ram, the father of the above-named Kumul, presented a petition to the Court of Nizamut Adawlut, praying for the release of his son, on the ground of his having been then in confinement for a period of eight years, and his being a sufferer from extreme sickness.

On this petition the second Judge, (C. Smith,) after inspecting the original proceedings, recorded the following opinion. "Adverting to the circumstances of the case, which appears to me to have been rather a drunken and indecent assault than a rape, and for

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KUMUL MUSSHAL-CHEE'S case.

which, even had it been a rape, the seven years imprisonment already undergone, in addition to 30 *corahs*, would have been a sufficient punishment, I propose that we order the prisoner's release, upon the ground of the over-severity of the original sentence."

W. Leycester, (chief Judge.) "I have read the proceedings on this trial. In the first place, I question the competency of the Court to review and alter a criminal sentence on the stated grounds; for on a late occasion (the Allahabad people connected with the Sudder Commission proceedings) we addressed Government, not thinking ourselves competent to remit the sentence. We must be still more incompetent to modify this sentence, whether on the ground of its not having been a case of rape, or on that of over-severity in the sentence. Again, I do not see ground to recommend remission of sentence to Government. It is clear from the sentence, that the Judges viewed the case in the same light as the Circuit Judge; and taking the case as such, which I think we are bound to do, I am not able to say that the punishment was more than adequate to the crime. The atrociousness of the case, as far as public morals and public decency are concerned, is admitted by both *futwas*. Our *futwa* is not explicit as to the question of the rape, and the Circuit *futwa* says, it is not clearly established. I presume the doubt on that point arises from the assumed improbability of a man's being brute enough to commit that monstrous insult on the community with which this prisoner was charged. At the same time, however, the *futwas* admit the whole of that brutality and insult to public morals and decency, but merely declare it to have been unavailing in committing a personal injury on the prosecutrix. The prisoner's witnesses prove his defence to be utterly false, and there is no ground to suspect the prosecutrix of being other than an honest woman. I would consequently reject the petitioner's prayer *in toto*."

The third Judge, (C. T. Sealy,) having when a Judge of Circuit, tried the original case, declined giving any opinion on the petition.

W. Dorin, (fourth Judge.) "I think it would be a very dangerous precedent, if the Court were to interfere in such a case as this; and I think the case is not such as to call for interference from any quarter. That the Nizamut Adawlut have not the power to revise a criminal sentence in any case, I am not prepared to say. There may be very clear cases of sentences passed from error or inadvertence, in which a remedy must some how or other be given, or there may be a case in which the sentence was against some positive law, and therefore invalid and null *ab initio*. But here we have a sentence which certainly cannot be called illegal, and which was passed on due consideration of the facts and law of the case (as far as we can collect) by two former Judges of the Court. The sentence of course, in their judgment, was a proper one; and that we, or any one or more of us, differ now from their opinion, is not in my mind a sufficient ground for interference. If it were, all former sentences of the Court might be brought up again before us, and, after our time, again before our successors. I think the only safe mode in such a case would be, to recommend the Government to inter-

fere with their power of pardon. But in this particular case there appears to me no adequate ground for such recommendation. The evidence shows a gross and shameful outrage, attended with violation of public decency. The cases of burglary in which punishment was partially remitted, cannot, I think, be quoted as precedents. The law regarding them had been altered entirely, and we undertook to remit without even looking at the proceedings. We were all aware, I believe, that the mode adopted was not free from objection."

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A. Ross, (fifth Judge.) "I doubt whether the Court is empowered to mitigate the sentence in this case; and I do not think there are sufficient grounds for recommending a mitigation of it by Government."

In conformity to the opinions of the majority of the Court, as above recorded, the petition was rejected.

CHOTEH, *against* KINNUR.

1826. Oct. 3d. KINNUR'S case.

Charge—ROBBERY with attempt to MURDER.

Prisoner convicted of throwing a boy into a well with intent to murder, and taking his ornaments; sentenced to imprisonment for life.

THIS was the case of a man named Kinnur, son of Huns, caste Brahmin, aged 22 years, resident of Mowahee, Pergunna Talgram, zillah Furruckabad, who was committed for trial at the second sessions of 1826, of that district, on a charge of throwing Purmooa, the son of Choteh, aged eight years, into a well, after taking from his person silver ornaments valued at three rupees.

The following are the particulars of the case. On the 9th of July 1826, Subsookh *Billahur* of Mouza Mowahee, brought the prisoner Kinnur Brahmin to the police Chowkee of Jelalabad, and reported that the prisoner had, on the 8th of July, thrown a boy named Purmooa, aged eight years, into a well, after taking off his ornaments. Choteh, the father of the boy, who accompanied the *Billahur*, stated, that on the 8th, when he was tending his cattle, a traveller happened to pass by, and heard the cries of a child in a well. He called out to him (Choteh) that some person had thrown a child into a well. He ran to the well, which was 200 paces distant, and discovered that the child was his own son. He immediately procured a rope from the village, and with the assistance of two men named Nynooa and Chedooa drew the boy up. On asking him how he came to fall into the well, the boy Purmooa stated, that he was sitting under a tree eating fruit, when Kinnur Brahmin came to him, and said, that if he would accompany him, he would give him some cucumbers to eat; under this pretence he carried him to the side of the well, took off his silver ornaments (a pair of bracelets), and then threw him into the well. Search was made for the Brahmin, but he had absconded. On the fol-

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lowing morning the father of Kinnur, or he himself, (for there was a contradiction in Choteh's statement in this respect,) sent for Choteh to his house, and delivered the boy's ornaments to him, requesting him to forgive the offence. On obtaining the bracelets, the *Billahur* carried the prisoner to the police Chowkee. The prisoner stated, in his answer at the Thana, that the boy Purmooa was sitting under a Neem tree, when he went to him, and said, if he (Purmooa) would accompany him, he would give him cucumbers to eat; that when they arrived at a well, he took off the boy's bracelets, and threw him into the well; that during that night, he staid at the village of Kereeapore, and the following morning returned to his own village, called Choteh to his house, and gave him the bracelets which he had taken from his son. Before the Magistrate, the prisoner said he was intoxicated at the time, and did not know whether or not he had taken off the boy's ornaments, and thrown him into the well; that on that day at noon, a person named Budleh, by caste a *Koomar*, resident of Mytowlee, had brought for him some intoxicating drug from the bazar at Tateeah; that he ate half of it, and became intoxicated. He added, that he did not know Budleh before, and had never eaten the drug before. He further denied his deposition at the Thana, and said he had been beaten by the Jemadar. Before the Court of Circuit, he denied the charge. The witnesses Nynooa and Chedooa stated, that they had assisted in taking the boy Purmooa out of the well, and then immediately proceeded on their own business. The well was a *Kucha* one, and on measurement was found to be 54 feet two inches deep, and to have 12 feet two inches of water. It was a very surprising circumstance that the boy was not drowned. He stated, that he went down once, and, on coming up again, got hold of a piece of stone, and retained his hold until he was drawn out. The Judge of Circuit did not take the deposition of the boy Purmooa, as, although shrewd and intelligent, he did not appear to have a sufficient sense of the nature and obligation of an oath. The prisoner's deposition at the Thana was proved, and it did not appear that any improper measures had been taken by the police officers to induce the confession. It was proved also, that there was no man of the name of Budleh, of the *Koomar*, or any other caste, a resident of the village of Mytowlee; which evidently falsified the prisoner's statement before the Magistrate.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of the charge, in which *futwa* the Judge concurred; and stated it to be his opinion, that it had been clearly and satisfactorily proved that the prisoner took off the ornaments from the boy Purmooa, and threw him into a well, with the intention of murdering him. He added, that the well was in use for irrigation, and belonged to the village in which the prisoner resided; and that it was therefore very improbable that he should have been ignorant of its depth, and the quantity of water.

The *futwa* of two of the law officers of the Nizamut Adawlut convicted the prisoner of having thrown Purmooa, a boy eight years of age, into a well, with intent to murder him for the sake of his

ornaments, and declared him liable to exemplary punishment by *Tazeer*.

1826. KINNUR'S case.

The Court, (present W. Leycester,) fully concurring in the *futwa*, sentenced the prisoner to imprisonment for life in the jail at Allipore.

1826. Oct. 7th. SURROOP'S case.

GOVERNMENT,
against
SURROOP.

Charge—MURDER.

THE prisoner Surroop was charged with the murder of Mussummaut Seemuttee, and tried for that offence at the Moorshedabad monthly sessions for May 1826. The circumstances of the case, as they came out in evidence, were as follow. It appeared, that the prisoner and the deceased had lived together for some years; but that two months previous to the murder, she had left him, and gone to a man named Kalee Rai as a house servant. The prisoner went to reclaim her; but she complained that he beat her, and refused to go with him. On the night of the murder, Kalee Rai heard her calling from a neighbouring house in which she slept, and sent a servant by name Gugun, who was sleeping in the same house with him, to see what was the matter. Gugun stated, that he went to the house where the deceased was, and she said there was a man within it. He found the door fast, however, and was returning to the house in which he had left Kalee Rai; but about a minute after she first spoke, she called again, and then was silent. He spoke to her, but she did not reply. A light was then procured, and Gugun went through a hole which he found in the mat wall, and saw, as he supposed, the prisoner and her lying dead with their throats cut. A neighbour was then called, and Gugun was sent to the Thana about a quarter of a mile off; but no other person at that time looked into the apartment, except a female by name Musst. Nynee, (not forthcoming on the trial,) nor was any watch set over it. About ten minutes after Gugun's arrival at the Thana, the prisoner Surroop also walked in with a severe wound in his throat, and stated that Kalee Rai, on finding him with the deceased, had attempted, with the aid of some bearers, to murder them both, but that he had escaped with his life. The Thanadar then went and set a watch, and at day light sending a man through the broken mat to open the door, found the body of the deceased lying with a razor near it, and held his *Sooruthal* in the usual manner.

The evidence of witnesses for the prosecution having been taken after the prisoner's defence, without his having been called on for a further defence, as regarded such testimony, the Court of Nizamut Adawlut held that the proceedings were informal, and they were returned that the omission might be supplied.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner of the murder on violent presumption, and declared him liable to discretionary punishment by *Seasut*. The Judge of Circuit concurred in the *futwa*, and was of opinion that the prisoner should suffer capital punishment. At the same time, he observed, one or two circumstances connected with the case seemed not wholly unworthy of attention. When Gugun saw the prisoner and the deceased lying with their throats cut, it seemed singular that no means were immediately taken to ascertain if they were both actually dead,

1826. and that in a populous neighbourhood, so little attention was paid, SURROOP'S that the prisoner escaped to the Thana without being discovered. case. It seemed also strange, that the prisoner should seize the moment when Gugun was close by to commit the murder, and, in the dark, should do it so effectually without inflicting other wounds. Gugun alone too saw the prisoner lying near the deceased, though, from his own statement, there could be no doubt, but, that it was him who was thus seen. His confidence in proceeding immediately to the Thana, and without a shadow of evidence charging Kalee Rai with the murder, seemed surprising; but he must have depended on his own wound to support his story.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner of the charge of having murdered Mussummaut Seemuttee, declared him entitled to his release.

The second Judge of the Nizamut Adawlut, deeming the prisoner guilty of wilful murder, and seeing no circumstances in his favour to render him a proper object of mercy, was of opinion that he should be sentenced to suffer death.

W. Leycester, (chief Judge.) "I agree in our acquitting *futwa*. I do not consider the evidence at all sufficient. I would acquit. Further evidence is taken against the prisoner after his defence, to which he was allowed no opportunity to reply. This is wrong, and ought to be noticed."

W. Dorin, (fourth Judge.) "I think the presumptive proof against this prisoner sufficient to convict him, and do not concur in the sudder *futwa*. I see no sufficient reason for rejecting the story told by Kalee Rai and those about him, and none for believing the prisoner's. But under the circumstance of superseding the *futwa*, besides there being one acquitting voice in the Court, I would sentence, not capitally, but to perpetual imprisonment. And previously to passing any sentence, I would send the case back to have the irregularity amended which appears on the record, viz. the evidence of three witnesses for the prosecution being taken after the prisoner's defence, without his having been called on again for defence, as far as regarded their testimony."

A. Ross, (fifth Judge.) "I think the presumption against the prisoner sufficient to warrant his being convicted of the murder of Musst. Seemuttee, and that he might be justly sentenced to suffer capital punishment. As there are, however, many instances of persons convicted of the crime of murder, being sentenced by this Court to perpetual imprisonment, and as I see no particular objection to such a sentence in the present case, I concur in the proposition of the fourth Judge, that is, that the prisoner Surroop be sentenced to imprisonment for life. I concur in thinking the irregularity here noticed should be amended before the Court pass sentence on the prisoner*

* The omission above noticed having been supplied, and the further proceedings submitted making no difference in the case, the prisoner was sentenced to perpetual imprisonment in the jail at Allipore.

GOVERNMENT,
against
OOTTUM and PURMANUND.

1826.
Oct. 28th.
Case of OOTTUM and PURMANUND.

Charge—UTTERING A FORGED DOCUMENT.

In a case of two prisoners there being three Judges for the conviction of the first, and two for the acquittal and two for the conviction of the second; the fifth Judge took up the proceedings with reference to the latter prisoner only, and being of opinion, that he should be acquitted, an order for his release issued; and, in deference to the majority, was signed by two Judges one of whom had originally given his voice for conviction.

THE prisoner Oottum was charged with presenting a forged draft for payment, with the intent of fraudulently disposing of its amount, and for having the said draft in his possession, and the prisoner Purmanund with being an accomplice and privy to the transaction, and illegally possessing papers, bearing the seal of the prosecutor, with a fraudulent intent. They were tried at the Benares monthly sessions for May, 1826. The facts of this case were as follow. The prisoner Oottum presented to the prosecutor (a servant of Raja Putnee Mul) a note, bearing the seal of the said Raja, and purporting to have been written by him, desiring him to pay to the bearer of it, viz. Oottum, rupees 989. This the prisoner Oottum admitted; and stated, that the other prisoner (who was a servant of Raja Putnee Mul) gave him the note, to deliver to the prosecutor, and desired him to receive the money. In consequence of the prosecutor having expressed some suspicions as to the authenticity of the note, the said Oottum (as he himself admitted on trial) absconded, from fear of the consequences. The other prisoner altogether denied having any concern in the transaction; but, on his house being searched, two sheets of blank paper, bearing an impression of Putnee Mul's seal, were found in a box.

The law officer of the Court of Circuit found the prisoner Oottum guilty of having presented a forged note, with the intent to defraud the prosecutor of a sum of money; and the other prisoner of having been an accomplice before and after the fact. The Judge of Circuit did not coincide with the finding of his law officer. Oottum's confession was not sufficient, he thought, to convict him of having presented the note, knowing it to be forged, as he had merely stated, that he took the note at the desire of the other prisoner; and though, afterwards suspecting from the manner of the prosecutor's enquiry, that it might be forged, be absconded, still he appeared to have taken no steps to avoid being apprehended. The Judge of Circuit further observed, that he did not feel any satisfaction, as to the nature of the proof against Purmanund, particularly regarding the finding of the two sheets of blank paper, with the impression of the seal before noticed, as, though the prisoner was apprehended at the time, yet his house was searched in his absence. Under these circumstances, the Judge considered the proof against both prisoners insufficient; and that they were both entitled to their discharge.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoner Purmanund Bramin of the charge, declared him entitled to his release; and convicting the prisoner Oottum Brahmin of having with him a forged note, and having fraudulently carried it to the prosecutor with a view to obtain and embezzle money, declared him liable to *Acoobut* for the offence.

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By the Court. W. Leycester, (chief Judge.) "I agree in our *futwa* acquitting Purmanund, but differ from that part of it convicting Oottum. It is no where shewn nor made presumable, that the said Oottum had cognizance of the forgery. I agree with the Circuit Judge in thinking both should be acquitted."

C. Smith, (second Judge.) "I concur with the *futwa*, differing from the senior Judge, and am of opinion, that each of the prisoners should be sentenced to three years imprisonment."

C. T. Sealy, (third Judge.) "I concur in our *futwa*, and would sentence Oottum as proposed by the second Judge. I would acquit Purmanund. The persons who searched his house were not previously themselves searched, and there is an awkward attempt made to saddle on this prisoner a theft of silver articles by the servants of Putnee Mul."

A. Ross, (fifth Judge.) "I concur in the conviction of both the prisoners, and in the sentence proposed to be passed upon them by the second Judge."

W. Dorin, (fourth Judge.) "The case of Oottum seems disposed of by three voices. Against Purmanund there is one circumstance, (rather loosely attested,) of two blank papers, bearing a seal which purports to be that of Raja Putnee Mul, having been found, on search by the police, at Purmanund's lodging, after he (Purmanund) was apprehended, and alleged, I presume, to have been found among his effects, (for there were two other fellow lodgers,) and the circumstance of its being sworn that Oottum before frequented Purmanund, though he now denies previous knowledge of Oottum. The story told by Oottum is not evidence against Purmanund. It might add to the credibility of the other evidence against Purmanund, if that evidence were sufficient for conviction. I do not think it safe to act on what appears against Purmanund, and would acquit him."

Under the above difference of opinion among the members of the Court, the Register submitted to their consideration the following memorandum. "In this case, the sudder *futwa* convicts Oottum, and acquits Purmanund. The chief Judge differs from the *futwa*, thinking both prisoners should be acquitted. The second Judge thinks both prisoners should be convicted. The third Judge is of opinion, that the first prisoner should be convicted, and the second acquitted. The fourth Judge thinks the second prisoner should be acquitted, giving no opinion as to the first; and the fifth Judge thinks both should be convicted. Here it is clear, that Purmanund should be acquitted, as three Judges have concurred as to that point; but there is a difficulty in drawing out the sentence, as the only two Judges who agree entirely (namely the second and fifth Judges) are for convicting him. The only plan apparently is to draw out the sentence in the names of all the five Judges. From their notes it will be seen what part they took in it. I can find no precedent in point." On perusing the above memorandum, the second Judge observed, that, as three Judges concurred with the law officers in acquitting Purmanund, he had no objection to sign a sentence of acquittal in his favour; and such being the case, that the sentence might issue under the authority of the second and third Judges.

This was accordingly done, and a sentence of three years imprisonment against Oottum, and of acquittal in favour of Purmanund, was issued, under the authority of the second and third Judges.

1826. Case of OOTTUM and PURMANUND.

BHUGWAN DAS,
against
SHUNKER DAS and GHUREEB DAS.

Charge—MURDER.

1826. Oct. 31st. Case of SHUNKER DAS and GHUREEB DAS.

In a trial for murder, in which there were two prisoners, four Judges of the Nizamut Adawlut having given their opinions, and there being a difference as to one of the prisoners, the fifth Judge took up the case, and pronounced his opinion with reference to that prisoner only; subscribing, however, the sentence on all three prisoners, drawn out according to the opinion of the two Judges with whom he partially concurred.

THE prisoners Shunker Das and Ghureeb Das were committed for the murder of Gopaul Das, the *Gooroo* of the prosecutor, Bhugwan Das, and tried for that offence at the 1st sessions of 1825, for Moozuffernugger. The prosecutor deposed, that on the night of the murder, the deceased was sleeping in a room, near a *Mundul* (a place of worship); that he himself was sleeping outside the house; and that the prisoners slept about ten paces distant from the place where the *Gooroo* slept, in a different apartment, separated by a wall; that when six *g'hurrees* of the night remained, Shunker Das opened the outer door of the house, and came to him (the prosecutor), and demanded fire to light his pipe for smoking. The prosecutor went for fire to the house of a neighbour named Buddun Jaut, and took it inside the house to Shunker Das. Ghureeb Das awoke, and said that some one inside was making a noise, as if choaking. On this the prosecutor called out to the *Gooroo*, but he made only a low hollow sound in reply. As the principal door of that room was fastened from the inside, they went in by a wicket on the other side of the house. Ghureeb Das told the prosecutor to bring fire, and make a light. The prosecutor accordingly lighted a lamp, and found the *Gooroo* on the ground. Ghureeb Das lifted up a cloth, with which the *Gooroo* was covered, and when he saw his forehead was fractured, remarked that the *Gooroo Jee* had fallen from his bed and broken his forehead, to which observation the prosecutor replied, that his head would not have been so much injured by falling from the bed. The prosecutor immediately went to the Moozuffernugger Thana. The Thanadar forthwith came and searched the house, and then sat down where the prisoners had slept. He sent for the Zemindars, and demanded of them how the death had happened. Rundah Singh Burkundaz found a stick under Shunker Das's bed, and another near the head of the bed; and on taking them up, blood appeared on both of them. In reply to an enquiry of the Darogha, Ghureeb Das said he had one rupee about him, and produced it. Shunker Das said he had none, and repeated the denial three times. The Thanadar proceeded to search him, on which he said he had fifty rupees about him, and lifting up his hands, cried out for mercy. In this act it appeared that there was blood on his hand, near one of his thumbs. This was alleged to have been seen by

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Choonee Lal, by the Thanadar, and others present. On searching his person, fifty rupees were found tied up in a purse. The last breath of life only remained when the prosecutor saw the deceased, and when he returned with the Thanadar, he was dead. The prosecutor could not identify the purse. Shunker Das had been at that place about three months: Ghureeb Das had arrived the same day, and put up there. The prosecutor had succeeded to the Gooroo's place: he was heir to him. The above was the substance of the prosecutor's deposition. The witness Gheesah went to the spot after the Thanadar's arrival, saw the three wounds, one on the head, another on the cheek of the corpse, apparently made with a knife, and blood flowing from the right ear. The wall was so high, that no one could get in from the outside. This witness confirmed the whole of the prosecutor's deposition regarding the money and knife which were found on the prisoners, also regarding Shunker Das's denial of having money, and the discovery of the sticks with blood on them. He further said, that when Shunker Das lifted his hands, Choonee Lal observed blood on his thumb, which the prisoner immediately put in his mouth for the purpose of washing it off; but a Burkundaz seized his hand, and the Thanadar also saw it. In reply to a question from the Court, he said, that if the door of the house was closed, no person could get into the place where the deceased slept, by climbing over the wall from the place where the prisoners slept, because it was too high, but they might get in through the wicket. Bindrabun was also sent for by the Darogha, being a Zemindar; saw the wounds of the deceased; proved the finding of the sticks; the finding of the purse on the person of Shunker Das; the blood on his hand, and that he was prevented from licking it off; stated, that the walls were so high that no one could pass over them. Choonee went to the place of worship, on hearing that Gopaul Das had been killed, saw the body, and proved the wounds; also that when the Thanadar and his people came to make search, they found the sticks (one of which was stained with blood) near the prisoners' bed; proved that Shunker Das denied having money, but that on searching him a purse of fifty rupees was found on him; saw blood on Shunker Das's hand, which on being observed by witness, he immediately licked off. Shunker Das had been there for more than three months, and dressed food for the deceased. Kamdar is a police officer: his deposition was nearly the same, as far as related to the sticks. Nunda Singh, a police officer, confirmed the above statements and evidence: this witness found one of the sticks. Bhujjun Das proved the purse to have been the property of the deceased; had seen it when he came with him to receive money, (his allowance which he received from Government;) the deceased was his *Goorbhaee*, (of the same religious brotherhood;) he knew the purse, as well as if it were his own; had seen it five or six days before the death of the deceased; it was then empty; did not know how it became filled. Knew one of the sticks to belong to Shunker Das. Bishen proved, that, in the month of Kooar, Gopaul Das shewed him a purse full of rupees, and said he had received them in payment for bullocks. He left Shunker Das sitting near Gopaul

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Das, who was killed that same night; had often put money into that purse and knew it well; he often had charge of it going to Hurdwar, and on other occasions; the sticks were left at the *Mundul*, four years ago, by some Fakeers; witness saw blood on both sticks, but most on the small one. Hureeah proved that Bnugwan Das, the prosecutor, slept outside the door, near the cattle. Ram Suhai *(a sharaff)* proved two of the rupees (old Furruckabad coinage), which the deceased had shewn him two days before he was killed. In order to ascertain how far this was possible, other rupees of the old Furruckabad coinage were shewn to the witness, with only one of those found on the prisoners among them. This the witness selected, and said that the other was not among those shewn him; and on the remaining rupee being produced, he immediately recognized it. There was no possibility of mistaking one of the rupees, for there was a mark where a ring had once been soldered to it, to hang round the neck, and the ring having been filed off, it had been returned into circulation. Ruhmoo proved the purchase of cattle from the deceased, and the payment of eighteen rupees to him, two of which were old Furruckabad coinage: he had them examined at the shop of the last witness. Two witnesses were called to prove Shunker Das's poverty, but their evidence seemed unimportant. Ghureeb Das said in defence, that he had remained at the *Mundul* that night, by the desire of the deceased, but urged nothing further. Shunker Das, in his defence, claimed the purse, and money contained in it, and called two witnesses to his character.

The *futwa* of the law officer of the Court of Circuit found the prisoner Shunker Das guilty on strong presumption (*Zuni Ghalib*) either as accessary or principal, in the wilful murder of Gopaul Das, and declared him liable to any period of imprisonment, or even to suffer death; but he declared there was only slight suspicion against Ghureeb Das. The Judge of Circuit concurred in the former part of the *futwa*, but differed from his law officer in opinion as to Ghureeb Das, considering him also guilty of participation in the murder, the fact of the blood on both sticks being in his opinion decisive as to two persons being concerned. He recommended that they should both be sentenced to suffer death.

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Shunker Das of the wilful murder of the prosecutor's *Gooroo*, declared him liable to *Acoobut*, and even to death by *Seasut* for the crime; and acquitting the prisoner Ghureeb Das of the charge, declared him entitled to his release.

By the Court. W. Leycester, (chief Judge.) "I would acquit Ghureeb Das, and have him examined as a witness, as to what he knows in this case, and as touching the movements of Shunker Das on the night in question. There are circumstances against Ghureeb, but the evidence is not without its contradictions: some say he licked blood off his thumb, others that he was prevented doing so. The story of the purse too is dubious; it obviously had nothing to mark it. I cannot help suspecting that the evidence takes its charac-

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ter from a prepossession of the prisoner's guilt. I would have the police Darogha examined as to what occurred in his presence."

C. Smith, (second Judge.) "I differ from the senior Judge, and concur with the Judge of Circuit as to the guilt of both; but to sentence one capitally will be enough: the other I would confine for life."

C. T. Sealy, (third Judge.) "I think both prisoners equally guilty of murder, and would make no difference in their punishment. I would sentence both to imprisonment for life with labour in the jail at Allipore."

A. Ross, (fifth Judge.) "I think the prisoner Shunker Das guilty of wilfully murdering his master, for the sake of the money in his purse: and I would sentence him capitally. The evidence against the other prisoner Ghureeb Das, is not, in my opinion, sufficient to warrant his conviction; and I would therefore acquit him, and order his release."

W. Dorin, (fourth Judge.) "I think there is a strong presumption against Ghureeb Das, of participation in the crime as a principal, either by an active share in it, or by aiding and encouraging the other. I would sentence him as proposed by the second and third Judges. My voice does not seem called for with regard to Shunker Das; there being three voices already for convicting. But his case admits of little doubt. It is observable, that the crime took place in September 1824; the commitment in October following; and the trial was closed in December 1825. After such an interval, the effect of capital punishment with regard to either prisoner may be questioned."

The opinion of the several Judges in this case appearing to be so various, it became a matter of doubt, as to how the prisoners should be disposed of; and the Register, therefore, prepared and submitted to the Court the following statement for their consideration and orders. "In this case, the Sudder *futwa* convicts Shunker Das, and acquits Ghureeb Das. The chief Judge is for acquitting Ghureeb Das, and admitting him as a witness against Shunker Das, whose trial he would postpone for further evidence. The second Judge thinks both prisoners should be convicted; that Shunker should be hanged, and Ghureeb imprisoned for life. The third Judge thinks both prisoners should be convicted, and both imprisoned for life. The fourth Judge thinks the second prisoner (Ghureeb) should be convicted, and sentenced to imprisonment for life. He gives no opinion as to the guilt or innocence of the first prisoner; but, with reference to the time that has elapsed, is doubtful of the effect of capital punishment in his case. The fifth Judge thinks the first prisoner (Shunker) should be convicted and hanged, and that the second (Ghureeb) should be acquitted."

On perusing the above, the second Judge observed, that there being so much difference of opinion, he agreed to a sentence of perpetual imprisonment upon Shunker Das, as well as Ghureeb Das, as proposed by the third Judge; and this being the case, that the

sentence might issue under the authority of the 2d, 3d, and 4th Judges.

1826. Case of SHUNKER DAS and GHUREEB DAS.

This was accordingly done on the 31st of October, all three Judges above named affixing their signatures to the sentence.

BUKHA SINGH, *against* KHIALEE BAZ and MUSSUMMAUT MAKHEE.

1826. Nov. 9th. Case of KHIALEE BAZ and MUSST. MAKHEE.

Charge—THEFT and MURDER.

It being proposed to sentence a prisoner, convicted of murdering a child for the sake of its ornaments, (the corpse not being found,) to perpetual imprisonment in transportation, with stripes, it was ruled by a majority of the Court, that he should be sentenced to imprisonment for life without transportation, but with stripes.

THIS trial came on at the monthly sessions for Shahjehanpore, held in April 1826. The prisoner Khialee Baz, caste *Nuth*, aged 20 years, was accused of the murder of Mussummaut Dhunkoa, a girl three years of age, daughter of the prosecutor, resident of the village of Shahgunge, and of the theft of her ornaments; and Musst. Makhee *alias* Ucko, wife of Luja Nuth, aged about sixty years, was accused of being an accomplice in the above murder. The following are the particulars of the case.

On Tuesday the 21st March, Musst. Dhunkoa, a girl three years of age, was missing; and after much search, it was generally supposed that she had been carried away by a wolf. On Saturday, the 25th, Pirtee, a relation of Bukha Singh, the father, heard that a young man had been seen with a child in his arms going in a westerly direction. The relations on this began to enquire whether any stranger had been at their village on the Tuesday, and at length ascertained from one Keshora Khakrobe, that a *Nuth* had been at the house of a man named Runjeet on that day. Runjeet, on being questioned, stated, that Khialee Nuth had been with him on that day, and left him in the evening. He was ordered to bring Khialee, which he did on Sunday. Khialee at first denied, but when he was recognized by two lads named Ghassee and Sibha, he confessed before Pirtee, Bhooree Singh, Hoolas Singh, Dilgunjun Singh, and Bhowanee Chowkeedar; produced a part of the girl's clothes, carried the above men with him to the river, and pointed out the place into which he had thrown the body. He also mentioned how he had disposed of the ornaments. He was sent to the Cotwallee of Shahjehanpore, where he was said to have confessed having perpetrated the murder, by drowning, and taking the ornaments; but independently of this alleged confession, which was not adequately proved, the charge against him was proved by, 1st, the depositions of the two lads Ghassee, aged fifteen, and Sibha, aged thirteen, who saw Khialee on Tuesday the 21st, the day the girl was missing, pass with a child in his arms, and who swore positively to the prisoner. 2dly, The evidence of Pirtee, Bhooree Singh, Hoolas Singh, Dilgunjun Singh, and Bhowanee Chowkeedar, before whom he confessed having brought the girl to his own hut, and to whom he pointed out the part of the river into which he had

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thrown the body of the girl, and before whom he produced a part of the girl's dress, and also stated that Maha Chumar had the *Hunslee*. 3dly, The evidence of Maha Chumar, to whom Khialee pledged the *Hunslee* of the girl. 4thly, The evidence of Umr, to whom Khialee gave a pair of silver bracelets belonging to the girl, in exchange for a pair of shoes. 5thly, The confession of the prisoner Khialee in the Foujdarry Court at Shahjehanpore, and his defence before the Court of Circuit. The proof against the female prisoner consisted in her living with the male prisoner (her grandson), her being always in his society, and consequently privy to the murder. The body of the girl was not found; but it was proved by the evidence of the witnesses, that the river was as deep as a man's waist, and a running stream, which would have carried away the body.

The *futwa* of the law officer of the Court of Circuit convicted the prisoner Khialee Baz of wilful murder, by drowning the girl in a river; and Musst. Makhee of concealing the murder. The Judge of Circuit concurred in the *futwa*, and considered the prisoner Khialee to be deserving of capital punishment. With respect to Musst. Makhee, the grandmother of the prisoner Khialee, although she certainly concealed the circumstance of the murder, yet on consideration of all the circumstances of the case, he did not think she was deserving of any punishment, especially as she was a miserable object, in the last stage of imbecility of mind and body. She had no one, he added, but this grandson to look to for support; and, moreover, to whom was she to disclose such a crime?

The *futwa* of the law officers of the Nizamut Adawlut, convicting the prisoner Khialee Baz of the wilful murder of the infant daughter of the prosecutor for the sake of its ornaments, and the prisoner Musst. Makhee, of concealing the crime of the male prisoner, declared Khialee liable to *Acoobut*, and even to death, by *Seasut*, and Makhee liable to *Acoobut*.

By the Court. C. Smith, (second Judge.) "I agree in the conviction; but, the body being not found, I would transport for life, instead of sentencing capitally. Against the old woman I would award no further punishment. The Court of Circuit suggesting a sentence of death, another Judge is required."

The second Judge at the same time drafted a sentence, which he proposed should issue, awarding to the male prisoner the punishment of 30 strokes of the rattan, and imprisonment in transportation for life.

W. Dorin, (fourth Judge.) "The evidence is, I think, sufficient to warrant a conviction of the prisoner Khialee for the murder of the child Dhunkooa, for the sake of its ornaments, the said prisoner having taken the ornaments and clothes, and thrown the child into a *nullah*, described as a stream, waist deep. On the evidence against the old woman, I would convict her of no more than having known and concealed the fact of stealing the child, and robbing it of its ornaments. That she knew the fact of murder, is only to be arrived at by an inference drawn from her Foujdarry confession. The other point is clearer and plainer. I agree with the 2d Judge in

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not adjudging against her any thing further. As to the other prisoner, the body not having been found, (and though we deem it presumable that the child is dead,) the possibility of its reappearance having precluded a capital sentence, and suggested a revocable one, it seems to me that the sentence should be imprisonment for life, without transportation."

Third Judge, (C. T. Sealy.) "There can be no doubt that Khialee Baz murdered the child; but as the body was not found, and as it is usual to sentence the culprit to imprisonment for life, I would direct that he be imprisoned in the jail at Allipore for life. I am not for exempting him from corporal punishment, which the robbery has made him liable to, and which he is fully deserving of. Had the body been forthcoming, I should have given my vote for a capital sentence. I would not sentence the old woman to any further punishment. I concur with the second Judge with regard to her."

The following sentence was accordingly issued. "The Court, (present C. T. Sealy and W. Dorin,) concurring in the *futwa* as to the male prisoner, and adverting to all the circumstances of the case, sentence the prisoner Khialee Baz *Nuth* to receive thirty strokes of the rattan, and to be imprisoned for life in the jail at Allipore; and in consideration of the age and infirmity of the female prisoner, do not think fit to sentence her to any punishment beyond the imprisonment she has already undergone."

1826.
Nov. 20th.
CHETTA'S case.

BALEE,
against
CHETTA.

Charge—MURDER.

The prisoner killed, by repeated blows of a club, a man who was in the act of violating hisbrother's wife: sentenced to one year's imprisonment, the homicide not being necessary to the prevention of the act.

THE prisoner Chetta was charged with striking Phopeea, the prosecutor's son, with a club, in consequence of which he died after three days, and tried for that offence at the Bareilly monthly sessions for July. The case was simply as follows. Musst. Oodeea, the sister-in-law of the prisoner Chetta, was proceeding to the fields, late in the evening, on a call of nature, where she was seized by the deceased Phopeea, who threw her on the ground, and was proceeding to violate her, when Chetta, who was in his field close by, hearing her screams, came to the spot with his club, and rescued her. The blows he bestowed on Phopeea before this rescue was effected, caused the death of the latter on the third day afterwards. The only witness to the fact was the woman herself; but her statement was confirmed by the confession of the prisoner.

He was declared entitled to his release by the *futwa* of the law officer of the Court of Circuit; but the Judge, considering that under section 5, Regulation IV. 1822, a verdict of "*Deeut*" would appear to be usual in such cases; and by the same rule, that the proceedings

1826. were required to be submitted for the orders of the Court, he forwarded them accordingly.

CHETTA'S case.

The *futwa* of the law officers of the Nizamut Adawlut, finding the fact of the prisoner having killed the prosecutor's son, and finding also that he killed him when in the act of committing adultery with the prisoner's brother's wife, declared it to be justifiable homicide, and the prisoner entitled to his release without punishment. On a second question put to the law officers, under section 5, Regulation IV. 1822, they answered, that if the plea above mentioned had not existed, the prisoner, under the circumstances of the case, and with reference to the weapon he used, would be liable to *Deeut.*

By the Court. C. Smith, (second Judge.) "The plea of the woman's being his brother's wife is not sufficient, as is clear from section 5, Regulation IV. 1822, by which, even had she been his own sister, the plea would not have availed him. That regulation was intended to confine the right of killing an adulterer and in the act of adultery to the husband of the woman. Under all the circumstances of the case, I would sentence him to imprisonment for five years."

W. Dorin, (fourth Judge.) "Under the circumstances of this case, I would sentence to one year's imprisonment only. I cannot look on it as altogether justifiable homicide, but the criminality seems to me slight; assuming the facts to be, that the prisoner finding the deceased in an attempt to violate his (the prisoner's) brother's wife, forthwith applied his club: this was not indispensably necessary to the prevention of the offence."

The chief Judge (W. Leycester) concurring in this opinion, a sentence of one year's imprisonment was passed accordingly.

1826. Dec. 14th. Case of SOBHAN LUSHKER and MANICK BISWAS.

GOVERNMENT, *against* SOBHAN LUSHKER and MANICK BISWAS.

Charge—MURDER.

Two individuals, (youths) convicted of aiding in an affray, in which an Havildar was beaten, and subsequently died from the effect of the

THE prisoners Sobhan Lushker and Manick Biswas were charged with severely wounding, and thereby occasioning the death of Roop Singh Havildar. Their trial was held at the Barasut monthly sessions for August 1826. The following is an outline of the case.

The deceased Havildar was proceeding with a party of sepoys from Jessore to Bagundee, in charge of treasure, and upon approaching the village of Nugurghuta, he sent on two sepoys (the witnesses Ramchurn and Toolseeram) to procure provisions. They stopped at the house of Eusuf Lushker (the principal *ryot* of the village) and were recommended by the witnesses Ruhm Ulee and Bissessur Singh, Zumeendaree peons, who happened to be there, to go to the Zumeendar's *cutcheree,* (about three miles distant,) where they would be able

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blows, sentenced to one year's imprisonment only, the affray having been produced by the misconduct of the sepoys.

more easily to obtain what they required. The deceased arrived soon after, but declined proceeding farther, saying it was then noon, and the party fatigued. The sepoys accordingly took off their accoutrements, and deposited the treasure in the entrance hall of Eusuf's house, and abusive language passed between the witness Ramchurn and the prisoner Manick, in consequence of the former desiring the latter to produce the master of the house. Two of the sepoys then went to the house of Azeem Lushker in search of mats, and seeing him sitting down upon one, demanded it of him, but he refused to give it up. They went back and mentioned the circumstances, upon which two or three others came and carried away Azeem, (taking his mat with them,) and one of them struck him. The prisoner Manick coming out of Eusuf's house, Ramchurn mentioned his having abused him, and he was therefore laid hold of by order of the deceased, and his hands tied; but they were immediately loosened at the intercession of the witness Wulfeut Shah. The prisoner Soobhan, brother of Azeem, going towards the sepoys, one of them remarked he was coming to create a disturbance, and he was detained likewise, as was Zakir, uncle of Eusuf, whom the deceased said he suspected to be the master of the house, though Zakir told him he had come to visit his relation, and offered to furnish the party with provisions, if they would accompany him to his house about five miles off. Azeem and the prisoners having effected their escape into Eusuf's house, the deceased observed that Zakir had made a signal to them to do so; and some of the sepoys being about to bind him, the prisoners, with two other persons, came out with bricks, and after throwing them at the sepoys, re-entered the house. The Naigue (Ramdhun witness) then told the sepoys to be on the alert, as a quarrel seemed probable, and four or five of them going outside of the room which the party had appropriated, about twenty-five persons armed with clubs, &c. sallied forth from Eusuf's house, and, with a considerable number of the villagers assembled on the spot, commenced throwing bricks at the sepoys. The deceased approaching to remonstrate with them, was laid hold of, and severely beaten. The rioters then dispersed, and information having been forwarded to the Thana, the Darogha proceeded to the spot to enquire into the business. Two days after, the deceased pursued his march by easy stages to Bagundee, and having delivered the treasure, was returning in like manner to Jessore; but he became so ill when he arrived within six or seven coss of it, that it was found necessary to send him on in a *dooly*; and it would appear from the evidence of the Naigue (Ramdhun,) and the sepoys, Ramchurn and Toolseram, that after the assault, he was frequently unable to move without assistance. The deceased received a blow on the leg, apparently from a brick, and also a severe contusion on the left side of the head from a club, which, in the opinion of the Surgeon of Jessore, occasioned his death.

The law officer of the Court of Circuit delivered a *futwa*, convicting the prisoners, and declaring them liable to punishment by *Tazeer*. The Judge concurred in the finding; but at the same time,

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as he conceived there were some extenuating circumstances in favour of the prisoners, he deemed it proper, under the provisions of section 3, Regulation II. 1823, to submit the case for the consideration and final orders of the superior Court.

The *futwa* of the law officers of the Nizamut Adawlut, acquitting the prisoners Sobhan Lushker and Manick Biswas of the charge, declared them entitled to their release.

By the Court. C. Smith, (second Judge.) "I agree in the acquittal, and, even had the facts been proved, should have doubted whether the prisoners and the rest of the villagers had done more than self-defence warranted. That the aggression began with the Havildar and his party is clear; and I would not discourage a spirit of resistance on such occasions. The prisoners are both young, one 18, the other 15 years old."

W. Dorin, (fourth Judge.) "I think there is sufficient proof that these two prisoners were present in the affray in which the Havildar received hurts which caused his death. At the same time it is clear, that the gross misconduct of the sepoys produced the affray, and rising of the villagers. I would bear lightly on these two prisoners, who are mere boys, and who probably were not the actual inflictors of the bodily injury received by the Havildar; and would adjudge one year's imprisonment, including what has elapsed from the date of their apprehension. They were apprehended, one on the 9th of June last, the other on the 2d of July."

The chief Judge (W. Leycester) concurring in this opinion, a sentence of one year's imprisonment was passed accordingly.

APPENDIX.

1821.

Case of MIHRBAN and others.

A.

Statement A, shewing the Names of Prisoners, by what Witnesses recognized, &c.

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Chief of the gang, and of the whole tribe of *Sear murwas*.	Belonging to what Sirdar.	Remarks.
A. 1	Mihrban, *alias* Seetaram, son of Chait Roy, Sirdar 1st.	Munkapore, in Perguna Baraitch.	*Sear Murwa*. Calls himself a Rajpoot, aged 40.	29	3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 33, 36, 37, 38, 39, 40, 41, 42, 44, 45, 51, 52, 53, 54, 55, and 56.		*			Brought in from Shekerghatty, accompanied by two Chuppurssees, *A*. See witnesses No. 63, 64, and 67.	Chief of the gang, and of the whole tribe of *Sear murwas*.	Belonging to what Sirdar.	This man has a wound in his left foot, by which his toes have been injured, and one turned up, and a sword cut on the left arm. By these marks, as well as from his general appearance, he was described by the witnesses before his apprehension, and is clearly recognized to be the person who last year, in the disguise of a Raja, traversed the country, and was leader of the gang of robbers who committed the Mukra Dacoity; and from the testimony of Soorut Singh, Soudanee Kuhar, and Heera prisoner, corroborated by information obtained from the police Darogha of Fyzabad, it appears that there is no such person as Seetaram residing in the village of Munkapore, or holding land there; but that the prisoner Mihrban is well known to be a robber, and chief of a horde of *Sear Murwa* who live by plunder.

2	Sheodeen, *alias* Sooltan, son of Munsha *alias* Chait Roy, Sirdar 2d.	Heeranuggur, in Pergunna Gorekha.	*SearMurwa.* Calls himself a Rajpoot, aged 25.	22, 36, 38 51, 52, 53	9	23	Dft.	*	*	Apprehended at Dundeehaugh near Gya. See witnesses No. 66, 68, 69, and 83.	A No. 1.	Brother to No. 1, which however he denies. Was not Surdar last year; but there appears the strongest presumption of his having accompanied his brother last year, and having been concerned in the Mukra Dacoity.
3	Bhoop Singh *alias* Munsa, son of Punye Singh, Sirdar 3d.	Burrayah in Pergunna Gonra.	*SearMurwa.* Calls himself a Rajpoot, aged 60.	*36*, 38, 39, 55.	37		*		*	Apprehended at the tank of Manpoor near Gya, *B.* See witnesses Nos. 74, 75, 76.	Uncle to No. 1, and chief of a large gang.	Was the leader of the gang of *Sear Murwas*, after the death of Kullunder, but is now under Mihrban. Does not appear to have been concerned in the Mukra Dacoity; but from the confessions of several robbers who were convicted of Dacoity in the zillahs of Juanpoor and Sarun, there is reason to believe that this Munsharam was their leader, as a description given by them perfectly agrees with the appearance. He no doubt accompanied No. 1, on the present occasion, for the purpose of committing robbery. See Budlapoor and Gobindgunge cases: Extracts from.
4	Biram Singh *alias* Bullee, son of Munsa Singh, Sirdar 4th.	Bunkutta in Pergunna Gonra.	*SearMurwa.* Calls himself a Rajpoot, aged 24.	9, 55	23, 36				*	With No. 3.	*B.*	Son to the above No. 3, which he denies. Was not concerned in the Mukra Dacoity, but has accompanied his father on other expeditions of this nature.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoners, and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Sing to have been in the Mukra Dacoity.	Do. do. by Soudance Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
5	Kala Singh *alias* Kurryoh Singh, son of Chunda.	Dhussah in Pergunnah Baraitch.	*Sear Murwa*. Calls himself a Rajpoot, aged 34.	22, 44, 66, 53.	5, 6, 7, 9, 10, 11, 14, 23, 36, 54, 55, 56.		*	*	*	*A* No. 1.	*A*.	This man is fully recognized by the witnesses to have been with Mihrban last year, and his *Karpurdas* or agent. He went last year also by the name of Kala Singh, and appears to have been one of the confidential persons sent to Calcutta to obtain information of the despatch of the boat of treasure. He admits having been Mihrban's servant for more than a year, and was, there is no doubt, actively concerned in the Mukra Dacoity.
6	Bundoo Singh, son of Busswant.	Rugoonath in Pergunnah Gonra.	*Sear Murwa*. Calls himself a Rajpoot, aged 54.	11, 14, 51.	6, 9, 10, 28, 29, 36, 43, 46, 52, 53, 55.		*	*	*	*A* No. 1.	*A*.	This person is also already recognized by the witnesses to have been with Mihrban last year. He appears to have been a Jumadar under Burelleea, an inferior chief, and to have been actively concerned in the Mukra Dacoity. There is reason to believe he was a Darogha under Kullunder, and has still considerable influence with the gang.

7	Davee *alias* Ramdeen, son of Motee.	Sukurreea, in Pergunna Atrouly.	*SearMurwa.* Calls himself a Rajpoot, aged 25.	14, 38, 42, 46, 51.	9	23	*	*	*	*A* No. 1.	*A.*	One of the persons dressed as a Seepahee. He admits being a servant of Mihrban, and having known him all his life, and there is strong presumption that he was concerned in the Mukra Dacoity: although only recognized before me by one credible witness, besides Soorut Singh and Heera prisoner: several witnesses however swore to him before the Magistrate.
8	Nund Lal, son of Samunt.	Munkapoor in Pergunna Baraitch.	*SearMurwa.* Calls himself a Rajpoot, aged 27.	38, 39, 52.	8, 9, 14, 22, 51.	6, 23.	*	*	*	*A* No. 1.	*A.*	Was also dressed as a Seepahee, and admits having been upwards of one year in the service of Mihrban. He is a Budhek, and fully recognized by the witnesses to have been with the gang last year, and to have carried a blunderbuss; and I have therefore no doubt he was actively concerned in the Mukra Dacoity. He appears a daring character, and if he is not a subordinate Sirdar, he is at least one of those in Mihrban's confidence.
9	Beerbul, son of Bunsee.	Bhunga in Pergunnah Causee.	*SearMurwa.* Calls himself a Rajpoot, aged 22.	22, 38, 39, 55.	51	23	*	*	*	*A* No. 1.	*A.*	This man admits being one of the Seepahees of No. 1; is a Budhek from the west; and several witnesses before the Magistrate recognized him besides Heera and Soudanee Kuhar, and I think there can be no doubt but that he accompanied the gang last year, and must therefore have been concerned in the Mukra Dacoity.

Statement A, shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soornt Singh to have been in Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
10	Ramdeen *alias* Sheodeen, son of Hitcha.	Gonra in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Baree, aged 25.	22, 39, 54, 55.	9, 53	23	*	*	*	*A* No. 1.	*A.*	Admits being a Seepahee of Mihrban. His father it appears was a Rajpoot, and his mother a *Sear Murwa;* was of Mihrban's party last year, and no doubt concerned in the Mukra Dacoity. His real name is Ramdial.
11	Mohun, son of Dulleep.	Bhungu in Pergunna Causee.	*Sear Murwa.* Calls himself a Rajpoot, aged 17.		9	24, 38				*A* No. 1.	*A.*	This lad, although some of the witnesses think he was with Mihrban last year, was not concerned in the Mukra Dacoity, having been at the time in confinement on a charge of Dacoity in the Juanpoor jail, as appears from the deposition of witnesses No. 58 and 59. He there called himself Pirthee. He admits having come this year as a servant of Seetaram *alias* Mihrban.
12	Rambul, son of Hurry Singh.	Ahry in Purgunna Chetawur.	*Sear Murwa.* Calls himself a Rajpoot, aged 17.	6, 9, 37, 38, 39, 43, 46.	23, 24, 51.		*		*	*A* No. 1.	*A.*	Admits being a Seepahee of Mihrban. Appears to have been adopted by (5) Kala Singh: was certainly with Mihrban last year in the Mukra Dacoity.

13	Bhageeruth, son of Beerbul.	Kukurdary in Pergunna Bhunga.	*SearMurwa.* Calls himself a Koormee, aged 18.	38, 55	9, 19	22, 23	*	*	*	*A* No. 1.	*A.*	Admits being a Seepahee of Mihrban. Was certainly with Mihrban last year in the Mukra Dacoity.
14	Buljeet, son of Nowul.	Gunshampoor, Luknow.	*SearMurwa.* Calls himself a Rajpoot, aged 20.	14, 36, 37, 38, 39, 55		23				With No. 2.	*A.*	This man is a Budhek, and came lately from the west, and admits being now a servant of No. 1. It is doubtful whether he was in the Dacoity last year or not.
15	Burryah *alias* Khemanee, son of Sudola.	Munkapoor in Pergunna Baraitch.	*SearMurwa.* Calls himself a Jaut, aged 30.	9, 22, 38	31	23	*	*	*	*A* No. 1.	*A.*	Admits being one of Mihrban's Seepahees Is a Budhek from the west, and was certainly concerned in the Mukra Dacoity, although only recognized by one witness before me, besides Soorut Singh and Soudanee.
16	Hurchund, son of Motee.	Rughoonath in Pergunna Gonra.	*SearMurwa.* Calls himself a Jaut, aged 30.	23, 28, 43, 54	14		*	*	*	*A* No. 1.	*A.*	Admits being one of Mihrban's servants. Is a Budhek, and was certainly concerned in the Mukra Dacoity.
17	Kunhya, son of Chunda.	Koledhekoah in Pergunnah of Oude.	*SearMurwa.* Calls himself a Rajpoot, aged 27.	7, 38, 39, 54, 55	9, 10, 53, 14	14, 23	*		*	With No. 2.	*A.*	This man is brother of Kala Singh (5), and is a Budhek from the west; was certainly concerned in the Mukra Dacoity last year. His real name appears to be Hudgee, and he is probably in the confidence of the Sirdar of whom he admits being a servant.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
18	Thoree *alias* Bisram, son of Bheemul.	Etwa in Pergunna Mutchery.	*Sear Murwa*. Calls himself a Rajpoot, aged 30.	7, 9, 11, 38, 42, 43, 52	10, 13, 24, 36, 51, 53, 14	23, 14	*	*	*	With No. 2.	*A.*	This is the father of one of Mihrban's wives, and brother to another of them. He was employed as a spy to obtain information respecting the treasure, and afterwards was concerned in the Dacoity. Says he is in the service of No. 1.
19	Mungul Singh, son of Bheemul Singh.	Baujpoora in Pergunna Atroula.	*Sear Murwa*. Calls himself a Rajpoot.	9, 38, 39, 51	8, 27	23	*			With No. 2.	*A.*	This is the brother to No. 18; but it is not clear to me that this prisoner was with Mihrban last year; and besides, he is quite a lad, and could not have been actively concerned. He no doubt accompanied the gang this year.
20	Budloo, son of Munsharam.	Duttooly in Pergunna Baraitch.	*Sear Murwa*. Calls himself a Rajpoot, aged 22.	38, 39, 42, 44	7, 9, 51	22, 23, 36	*	*		*A* No. 1	*A.*	This man appears to have been with Mihrban last year: although named by Heera, he was probably under one of the inferior chiefs. Admits having been a year in the service of No. 1.

21	Mohun Singh, son of Nudureea.	Khyrubad in Pergunna Lucknow.	*SearMurwa.* Calls himself a Rajpoot, aged 35.			4, 6, 9, 22, 46	Dft.			A No. 1.	A.	It does not appear that this man was with Mihrban last year. Soorut Singh can only say he is one of No. 1.'s followers. Admits being in the service of No. 1. and having accompanied him this year.
22	Pirthee, son of Gaujoo.	Cole in Pergunna Baraitch.	*SearMerwa.* Calls himself a Rajpoot, aged 20.	39	44	24	*	*	*	With No. 2.	A.	Calls himself a servant of Nowulgeer, but appears to have been in the Mukra Dacoity last year. Is a Budhek.
23	Rujjah, son of Bhowanny.	Coledheekoah in Pergunna Baraitch.	*SearMurwa.* Calls himself a Rajpoot, aged 25.	9		23, 36, 52				With No. 2.	A.	This man appears to have come lately from the west, and to have joined Mihrban's gang with Nowulgeer (24), and probably did not accompany Mihrban last year, but is of his gang.
24	Nowulgeer, son of Chunda.	Oldheekoah in Pergunna of Oude.	*SearMurwa.* Calls himself a Rajpoot, aged 40.	10, 11, 22, 39, 52, 54	5, 8, 25, 38	23				With No. 2.	A.	Appears to have lately joined Mihrban's gang. He may have been concerned in the Mukra Dacoity last year under some other chief; but I think this is doubtful, as Soorut Singh and Heera say he was not there. He pretends to be a Gosain, and is dressed as such. There probably was a person dressed as a Gosain with the gang last year, whom the witnesses have mistaken for the prisoner.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoner and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudagee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
25	Munsah, son of Nehaul.	Munkapoor in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Kuhar, aged 20.	19, 37, 39	5, 7, 9, 10, 11, 12, 23, 26, 38, 51, 52, 53, 54, 55, 56	14, 44	*	*	*	With No. 2.	*A.*	This man was most certainly concerned in the Mukra Dacoity, and is clearly recognized by the witnesses as the personal servant of Mihrban, and no doubt took an active part in it.
26	Motee *alias* Bhuggutram, son of Munny.	Bishoonpoor in Pergunna Munkapoor.	*Sear Murwa.* Calls himself a Rajpoot, aged 35.	38, 51	9, 30					*A.* No. 1.	*A.*	This man is of Mihrban's party. He came down last year, but was employed on board a boat, and does not appear to have been concerned in the Mukra Dacoity, although he might have joined No. 1. afterwards. Admits having accompanied Mihrban this year.
27	Lutchmun, son of Heera.	Dhukpoora in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot, aged 32.	12, 14 46	9	23, 55				With No. 2.	*A.*	A Budhek from the west. Is said to have been in confinement with No. 24. It appears doubtful whether he was down last year or not. Came with Mihrban this year.

28	*Motee*, son of Bheemul.	Byjepoor in Pergunna Atroula.	*SearMurwa*. Calls himself a Rajpoot, aged 32.	9, 55			23				With No. 2.	*A*. This man is a relation of Mihrban's; and there is strong reason to believe he was with No. 1 last year, of whom he calls himself a servant.
29	*Buldee*, son of *Munsa*.	Munkapoor in Pergunna Mutchooee.	*SearMurwa*. Calls himself a Buneea, aged 40.								With No. 2.	*A*. This man appears to be an idiot. He is said to be of the Buneea caste, and to have been insane when he came to live amongst the gang.
30	Oree, son of Pundohee.	Puckree in Pergunna Morah.	Guala, aged 35.			10	55, 10				With No. 2.	*A*. Does not appear to have had any concern in the Dacoity last year, but accompanied No. 1 as a servant on the present occasion.
31	Chumroo, son of Dulloo.	Poorooah in Pergunna Gonra.	*SearMurwa*. Calls himself a Koormee, aged 35.	10, 23, 44, 53, 54				*	*	*	With No. 2.	*A*. This man is father-in-law to Mihrban, and there is strong presumption that he was with him last year in the Mukra Dacoity, although not recognized by any of the witnesses before me, except Soorut Singh, Soudanee Kuhar, and the prisoner Heera.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoners, and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Sing to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
32	Heera, son of Undaram.	Rajgur Musary in Pergunna Jypoor.	*Sear Murwa.* Calls himself a Jaut, aged 30.		23, 38		*	*		With No. 2.	*A.*	This man admits being concerned in the Mukra Dacoity, and that he belongs to Mihrban's party. He has given such valuable information respecting the gang, and some prisoners who have lately been apprehended belonging to it, that I have been induced to stop all farther proceedings against him, concurring as I do with the Magistrate, that it would be advisable to grant him a conditional pardon.
33	Munsah, son of Anundee.	Utchulpoor in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Baree, aged 18.	9, 53, 55		23	Dft.	*	*	Apprehended in Gya. See witnesses No. 70 and 71.	*A.*	There is strong presumption that this man was concerned in the Mukra Dacoity, as he was fully recognized before the Magistrate to have been with No. 1 last year. He came this year under an inferior chief.

34	Keerut, son of Cheeda.	Utchulpoor in Pergunna Koosoomba.	*SearMurwa.* Calls himself a Baree, aged 19.	9, 10	31	23	*		*	With No. 33.	*A.*	Was concerned in the Mukra Dacoity, and appears to be *Karpurdaz* to Sooltan, the brother of Mihrban.
35	Rowur Singh, son of Mungree.	Utchulpoor in Pergunna Koosoomba.	*SearMurwa.* Calls himself a Rajpoot, aged 32.	37, 53, 55	9, 31		*	*	Dft.	With No. 33.	*A.*	It appears this man was concerned in the Dacoity last year.
36	Nunda, son of Jey Singh.	Utchulpoor in Pergunna Baraitch.	*SearMurwa.* Calls himself a Rajpoot, aged 40.	9		55				With No. 33.	*A.*	It appears doubtful whether this man accompanied Mihrban last year or not, but he appears to belong to the gang of No. 1.
37	Sookha, son of Bisram.	Utchulpoor in Pergunna Baraitch.	*SearMurwa.* Calls himself a Koormee, aged 30.	9, 46						With No. 2.	*A.*	It appears doubtful whether this prisoner was in the Dacoity or not; but he is one of the gang, and accompanied Munsa (3) this year.
38	Bhoop, son of Deep Chund.	Poorooah in Pergunna Gonra.	*SearMurwa.* Calls himself a Koormee, aged 40.	8, 10, 13, 14, 23, 36, 38, 44, 46, 53, 53	9, 12, 15		*	*	*	With No. 2.	*A.*	This man is father of one of Mihrban's wives, and certainly was concerned in the Mukra Dacoity last year, and said by Heera (32) to have shot the Peon on board the boat.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c.* *(Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Sooruj Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	REMARKS.
39	Zalim, son of Leela.	Poorooah in Pergunna Gonra.	*SearMurwa.* Calls himself a Koormee, aged 22.	9, 36		23	*		*	With No. 2.	*A.*	This man appears to have been wounded repeatedly, and there is strong reason to believe he was concerned in the Mukra Dacoity.
40	Lekhye, *alias* Baboo, son of Leela.	Poorooah in Pergunna Gonra.	*SearMurwa.* Calls himself a Koormee, aged 25.	2, 23			*	*	*	With No. 2.	*A.*	There is strong reason to believe this man was concerned in the Mukra Dacoity. Says he came with Bhoop, No. 38.
41	Hitcha, son of Reekhye.	Mutcher-ryGawan in Pergunna Khas, country of the Vizeer.	*SearMurwa.* Calls himself a Baree, aged 40.	3, 37, 51, 55		46				With No. 2.	*A.*	There does not appear to be sufficient proof that this man was in the Mukra Dacoity last year, but he appears to be one of Mihrban's gang.

42	Ramdeen, son of Puhlad.	Mutcherrygawan in Purgunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot. aged 30.	51, 52	9, 36, 10, 22	10, 23, 39	*	*	Dft.	With No. 2.	*A.*	I think there is strong reason to believe that this man accompanied Mihrban last year, and was concerned in the Mukra Dacoity.
43	*Goordial alias* Ramdeen, son of Newazee.	Mutcherrygawan in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot, aged 20.	9, 36, 51	7	23				With No. 2.	*A.*	It does not appear sufficiently clear that this man was concerned; and indeed he appears to have been apprehended at Benares last year with No. 90.
44	Goray Lal, son of Tirkha.	Doolapoor, in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 30.	12, 55	9	14, 23	*	*	*	With No. 2.	*A.*	There is strong presumption that this man, who is a Budhek, was concerned in the Mukra Dacoity, as he appears to have been fully recognized before the Magistrate.
45	Davee Singh, son of Gunga Singh.	Heerdanuggur in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 28.							With No. 2.	*A.*	Not sufficient proof of this man's having accompanied Mihrban last year, as one of his gang.
46	Dullah, son of Khurrugjeet.	Heerdanuggur in Pergunna Gonra.	*Sear Murwa.* Calls himself a Koormee, aged 22.	23, 53, 55	46, 51	37	*		*	With No. 2.	*A.*	There is strong reason to believe that this prisoner was concerned in the Mukra Dacoity. He appears to be a Budhek.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c.* *(Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soodanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	REMARKS.
47	Bitchook, son of Torul.	Goorgumry in Pergunna Atroula.	*Sear Murwa.* Calls himself a Koormee, aged 35.	55	38	14, 27, 23	*	*	*	With No. 33.	*A.*	Has several wounds on his body, sword cuts, and there is reason to believe was with Mihrban last year.
48	Medah, son of Rutna.	Rajgur in Pergunna Mucharee.	*Sear Murwa.* Calls himself a Rajpoot, aged 22.	8, 44		23	Dft.			*A* No. 1.	*A.*	It appears doubtful whether this person was with Mihrban last year or not, but is one of his gang.
49	Baul, son of Somye.	Utchulpoor in Pergunna Baraitch.	Gwala, aged 45.		44, 55					With No. 33.	*A.*	It does not appear that this man accompanied Mihrban last year, He came this year as a coolee with Munsa. He is not one of the horde.
50	Dhunput, son of Bhuttoo Singh.	Soonapar in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot, aged 18.	9, 23	19					With No. 3.	*B.*	Was not concerned in the Mukra Dacoity. Came this year with Munsa's gang.

51	Muhtab Singh, son of Gyne Singh.	Sonapar in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot, aged 27.	10, 28	9	23				With No. 3.	*B.*	Is not proved to have been in the Dacoity last year. Came on the present occasion as one of Munsa's gang.
52	Bhowanny Singh, son of Betchoo Singh.	Sonapar in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot, aged 27.		23, 24, 38, 55					With No. 3.	*B.*	Is not proved to have been in the Dacoity last year, and came on the present occasion as one of Munsa's gang.
53	Mayrey, son of Buddul Singh.	Sonapar in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot, aged 21.		2, 3, 7					With No. 3.	*B.*	Is not proved to have been in the Dacoity last year, and came on the present occasion as one of Munsa's gang.
54	Ramdial, son of Sonecheriah.	Burrayah in Pergunna Bungla.	*Sear Murwa.* Calls himself a Koormee, aged 45.		55					With No. 3.	*B.*	Is not proved to have been in the Dacoity last year, and came on the present occasion as one of Munsa's gang. Admits he came with Bhoop, *alias* Munsa (3).
55	Bukhtour, son of Mahungoo.	Burrayah in Pergunna Dubree.	*Sear Murwa.* Calls himself a Koormee, aged 40.		38					With No. 3.	*B.*	Is not proved to have been in the Dacoity last year, and came on the present occasion as one of Munsa's gang. Admits he came with Bhoop, *alias* Munsa.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
56	Dyarams, son of Beejye.	Burrayah in Pergunna Dubree.	*Sear Murwa*. Calls himself a Koormee, aged 50.	46	22, 36, 38					With No. 3.	*B.*	Is not sufficiently proved to have been in the Dacoity last year, and came on the present occasion as one of Munsa's gang. Admits he came with Bhoop *alias* Munsa (3).
57	Doorga, son of Dyaram.	Burrayah in Pergunna Dubree.	*Sear Murwa*. Calls himself a Koormee, aged 26.	9	25	23				With No. 3.	*B.*	Is not proved to have been in the Dacoity last year, and came on the present occasion as one of Munsa's gang. Admits he came with Bhoop *alias* Munsa.
58	Murdun, son of Motee.	Burrayah in Pergunna Dubree.	*Sear Murwa*. Calls himself a Baree, aged 45.		14							Is not proved to have been in the Dacoity last year, and came on the present occasion as one of Munsa's gang.
59	Muhlal, son of Dhummee.	Burrayah in Pergunna Dubree.	*Sear Murwa*. Calls himself a Baree, aged 20.	22, 24	9	23				With No. 3.	*B.*	Not sufficient proof of his having been of Mihrban's party last year. Admits having come with Bhoop this year.

60	Hurgobind, son of Gungaram.	Burrayah in Pergunna Dubree.	*SearMurwa.* Calls himself a Baree, aged 25.	53		55			With No. 3.	*B.* Not sufficient proof of his having been of Mihrban's party last year. Admits having come with Bhoop this year.
61	Peerbux, son of Emambux.	Dhotepore in Pergunna Gonra.	*Moosulmaun.* Calls himself a Sheikh, aged 20.						With No. 3.	*B.* Not sufficient proof of his having been of Mihrban's party last year. Admits being the Syce of No. 3, Munsa.
62	Ummer Singh, son of Munsa.	Bunkutta in Pergunna Gonra.	*SearMurwa.* Calls himself a Rajpoot, aged 22.		9	23, 9			With No. 3.	*B.* Not sufficient proof of his having been of Mihrban's party last year. One of Munsa's gang this year, and his son.
63	Woodye Singh, son of Lootawun.	Bunkutta in Pergunna Gonra.	*SearMurwa.* Calls himself a Rajpoot, aged 30.	22, 45		23			With No. 3.	*B.* Not sufficient proof of his having been of Mihrban's party last year. Admits he came with Motee (65), who it appears is Munsa's (3) *jemadar*.
64	Boojawun, son of Hitcha.	Bunkutta in Pergunna Gonra.	*SearMurwa.* Calls himself a Rajpoot, aged 30.	9, 55		23			With No. 3.	*B.* Not sufficient proof of his having been of Mihrban's party last year. Admits he came with Motee (65), who it appears is Munsa's (3) *jemadar*.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c.* (Continued.)

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
65	Motee Singh, son of Boolakee.	Bunkutta in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 40.	36, 37, 38, 44	4, 8, 22, 51					With No. 3.	*B.*	This man is a *jemadar* under Munsa (3), and it is not probable that he was concerned in the Mukra Dacoity; although recognized by several of the witnesses. However, he may have joined No. 1 before he reached home.
66	Shewuk, son of Ramjee.	Bunkutta in Pergunna Gonra.	*Sear Murwa.* Calls himself a Baree, aged 18.	42		23				With No. 3.	*B.*	It is not sufficiently proved that this man accompanied Mihrban last year. Admits he came this year with Motee (No. 65) as his servant.
67	Teekytee Singh, son of Kuderooa.	Bunkutta in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 30.	9, 38	2, 8	23, 28				With No. 3.	*B.*	Is brother-in-law to No. 10, but it appears doubtful whether he was concerned in the Mukra Dacoity or not. He came this year with Munsa. Admits he came this year with No. 65.
68	Madhoo, son of Bodee.	Bunkutta in Pergunna Gonra.	*Sear Murwa.* Calls himself a Koormee, aged 22.							With No. 3.	*B.*	Not in the Mukra Dacoity, but is one of Munsa's gang.

69	Teetur, son of Bhagouleea.	Bunkutta in Pergunna Gonra.	*SearMurwa.* Calls himself a Koormee, aged 40.	9	14				With No. 3.	*B.*	Not proved to have been concerned in the Dacoity, but one of Munsa's gang.
70	Jeeun, son of Koodge.	Bunkutta in Pergunna Gonra.	*SearMurwa.* Calls himself a Baree, aged 18.	38, 55					With No. 3.	*B.*	Not proved to have been concerned in the Dacoity, but one of Munsa's gang.
71	Koodge, son of Bengally.	Bunkutta in Pergunna Gonra.	*SearMurwa.* Calls himself a Baree, aged 50.		37	46			With No. 3.	*B.*	Not proved to have been concerned in the Dacoity, but one of Munsa's gang.
72	Runjeet, son of Damodur.	Bunkutta in Pergunna Gonra.	*SearMurwa.* Calls himself a Koormee, aged 40.	9	55	23			Apprehended at Soolerah. See witness No. 83.	*B.*	Appears to be of Munsa's party, and consequently was not concerned in the Mukra Dacoity.
73	Beneepershad, son of Baljeet.	Langhee in Pergunna Ferozabad.	*SearMurwa.* Calls himself a Rajpoot, aged 22.	10, 22, 23, 38	7, 5	9, 23		Dft.	With No. 3.	*B.*	It appears doubtful whether this man accompanied Mihrban last year, as there is reason to believe he was in confinement at Mirzapoor at the time. He came this year with Munsa.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoners, and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Sing to have been in the Mukra Dacoity.	Do. do. by Soudanee Kahar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	REMARKS.
74	Rambul, son of Buljeet.	Larghee in Pergunna Ferozabad.	*Sear Murwa.* Calls himself a Rajpoot, aged 15.							With No. 3.	*B.*	Not in Mukra Dacoity. Came with Munsa this year.
75	Ramdeen, son of Jaunbaz.	Pursounee in Pergunna Gonra.	*Sear Murwa.* Calls himself a Baree, aged 22.	38, 46, 53, 55	9, 36	23	*	*	*	With No. 3.	*B.*	There is strong reason to believe that this prisoner was concerned in the Mukra Dacoity, as he is clearly recognized He has the mark of *godna* on his forehead, and has probably escaped from some jail.
76	Jhurryher, son of Puhlad.	Ilee in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot, aged 25.	36, 42, 44, 54, 55	9	23	*			*A.* No. 1.	*A.*	Is the son of Bundoo, and said to have been with Burellea Sirdar last year; there is reason to believe was concerned in the Mukra Dacoity.
77	Ishree *alias* Keshree, son of Bussunt.	Ilee in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Rajpoot, aged 35.	14, 36, 46	9		*	*	*	With No. 3.	*B.*	Is brother to Bundoo, and there is strong reason to believe, he was concerned in the Mukra Dacoity.

78	Sheodeen *alias* Muroah, son of Nukched.	Illee in Pergunna Baraitch.	*SearMurwa.* Calls himself a Baree, aged 23.	9		23, 37	Dft.	*	With No. 3.	*B.*	Brother to No. 7. It is not quite clear whether he was concerned in the Mukra Dacoity or not. He appears to have been formerly under a chief named Barelleea.
79	Jokhun, son of Pultoo.	Doolahapoor in Pergunna Gonra.	*SearMurwa.* Calls himself a Koormee. aged 30.	55					With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.
80	Oody, son of Bisram.	Doolahapoor in Pergunna Gonra.	*SearMurwa.* Calls himself a Koormee, aged 30.	46					With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.
81	Sheodeen, son of Dhunee.	Doolahapoor in Pergunna Gonra.	*SearMurwa.* Calls himself a Koormee, aged 30.	38, 53	9	23, 9			With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.
82	Nusseeb, son of Jeet Roy.	Burraypoor in Pergunna Gonra.	*SearMurwa.* Calls himself a Rajpoot, aged 30.	9, 38. Dft.					With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c.* *(Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
84	Durrea Singh, son of Munsa.	Poorooah in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 27.	14, 23, 55 Dft.	9	9, 56				With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.
85	Seodeen Singh, son of Gunga Singh.	Burraypoora in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 25.	37, 55						With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.
86	Sawul Singh, son of Bheekharee Singh.	Burraypoora in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 40			23, 24				With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.
87	Daveedeen Singh, son of Bheekharee Singh.	Burraypoora in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 22.	9, 52. Dft.	38	44, 23				With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.

88	Davee *alias* Sawaram, son of Goomanee.	*Poorooah* in Purgunna Gonra.	*Sear Murwa.* Calls himself a Jaut. aged 50.			55			With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.
89	Radhay, son of Juggernath.	Poorooah in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 35.						With No. 3.	*B.*	Does not appear to have been in the Mukra Dacoity. Accompanied Munsa this year.
90	Kunhy, son of Sooltan.	Poorooah in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 35.	7, 22, 28	8, 9	14, 36, 51, 23			With No. 3.	*B.*	This man is said to be the manager under Munsa. He was probably mistaken by witnesses for one of the other prisoners, who is like him; and I am not satisfied he was in the Mukra Dacoity: and there is reason to believe he was apprehended in Benares last year with Mohun and Pirthee, and not released till February 1820.
91	Geerdharee Singh, son of Kishoor Singh.	Poorooah in Pergunnah Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 20.	10, 19, 22	9, 54				With No. 3.	*B.*	Does not appear to have been concerned in the Mukra Dacoity. Came with Munsa this year.
92	Zalim, son of Kirpa.	Poorooah in Pergunna Gonra.	*Sear Murwa.* Calls himself a Rajpoot, aged 30.			23			With No. 3.	*B.*	Does not appear to have been concerned in the Mukra Dacoity. Came with Munsa this year.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudunee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
93	Tek, son of Gopee.	Poorooah in Pergunna Gonra.	*SearMurwa.* Calls himself a Jaut, aged 20.	28, 55	9, 51	23						It is doubtful whether this prisoner was concerned in the Mukra Dacoity or not. He came this year with Munsa.
94	Khurga, son of Sooltan.	Poorooah in Pergunna Gonra.	*SearMurwa.* Calls himself a Jaut, aged 25.	9, 23, 38						With No. 3.	*B.*	Not concerned in Mukra Dacoity. Came with Munsa this year.
95	Nauhoo, son of Mahungoo.	Poorooah in Pergunna Gonra.	*SearMurwa.* Calls himself a Jaut, aged 55.			55				With No. 3.	*B.*	Not concerned in Mukra Dacoity. Came with Munsa this year.
96	Ramdeen *alias* Goray Lal, son of Dhunee.	Kusspa in Pergunna Ootroul.	*SearMurwa.* Calls himself a Koormee, aged 35.	6, 8, 10, 38, 46, 51, 54, 55	9, 14	23				With No. 3.	*B.*	There is strong presumption that this man was concerned in the Mukra Dacoity. He was fully recognized before the Magistrate.

97	Bhowaneedeen, son of Byjoe.	Kusspa in Pergunna Ootroul.	*Sear Murwa.* Calls himself a Koormee, aged 30.	9	14	23				With No. 3.	*A.*	Appears to have been apprehended in February 1820, with No. 6 and 90 in Benares, and was consequently not concerned in the Mukra Dacoity.
98	Buljeet *alias* Bulla, son of Jodha.	Kutwasee in Pergunna Bhuruttpoor.	*Budhek.* Calls himself a Jaut, aged 28.	10, 38, 40, 52, 53, 55	9, 12	12, 23	*	*	*	With No. 3.	*A.*	There is strong presumption that this man was concerned in the Mukra Dacoity.
99	Duljeet, son of Runjeet.	Jutwanee in Pergunna Bhuruttpoor.	*Sear Murwa.* Calls himself a Jaut, aged 50.	10	9, 54, 55, 56		*		*	With No. 3.	*A.*	There is strong presumption that this man was concerned in the Mukra Dacoity.
100	Jeeasoo, son of Josee.	Poorooah in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Koormee, aged 30.			23, 37				With No. 3.	*B.*	Does not appear to have been concerned in the Mukra Dacoity. Came this year with Munsa.
101	Buldeo, son of Josee.	Poorooah in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Koormee, aged 35.	9, 14, 46	28					With No. 3.	*B.*	Does not appear to have been concerned in the Mukra Dacoity. Came this year with Munsa.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	REMARKS.
102	Teekchund, son of Tilukram.	Poorooah in Pergunna Baraitch.	*Sear Murwa.* Calls himself a Koormee, aged 28.	53						With No. 3.	*B.*	Does not appear to have been concerned in the Mukra Dacoity. Came this year with Munsa.
103	Oree, son of Pershaud.	Mahadeha in Pergunna Gonra.	*Sear Murwa.* Calls himself a Baree, aged 45.	10, 46	9, 14	55				*A* No. 1.	*B.*	Has several marks of sword wounds, but does not appear to have been concerned in the Mukra Dacoity. Came with Munsa.
104	Gungadhur, son of Nanhoo.	Kukroree in Pergunna Bhinga.	*Sear Murwa.* Calls himself a Rajpoot, aged 35.							With No. 3.	*B.*	Not in Mukra Dacoity. Came this year with Munsa.
105	Rugha, son of Nanhoo.	Kukroree in Pergunna Bhinga.	*Sear Murwa.* Calls himself a Rajpoot, aged 22.			23				With No. 3.	*B.*	Does not appear to have been with Mihrban last year. Came this year with Munsa.

106	Nurkoo, son of Jokhla.	Hurrayherpoor in Pergunna Seetapoor.	*SearMurwa.* Calls himself a Koormee, aged 18.	9						Apprehended in Jungumbaree, Gya. See witnesses No 68 and 69.	*B.*	He is quite a lad, and if he was in the Dacoity last year with No. 1, could not have borne an active part in it.
107	Jeet Singh *alias* Abjeet, son of Nowal.	Etua in Pergunna Seetapoor.	*SearMurwa.* Calls himself a Rajpoot, aged *26.*	10, 23, 45	6, 7, 9, 36			Dft.		With No. 106.	*A.*	This man is half brother to Mihrban, and there is reason to think accompanied him last year, as he has been fully recognized.
108	Nanhoo, son of Mihrban.	Etua in Pergunna Seetapoor.	*SearMurwa.* Calls himself a Koormee, aged 45.	9, 36, 52, 55	42		*	*	*	With No. 106.	*A.*	There is strong reason to believe that this man was concerned in the Mukra Dacoity.
109	Chotay Singh *alias* Kunhya, son of Nyne Singh.	Poorooah in Pergunna Moorsun.	*SearMurwa.* Calls himself a Rajpoot, aged 30.	3, 10, 22, 55	1, 7, 9	23	*	*	*	Apprehended in Thana Jahanabad. See witnesses No. 75, 76, & 77.	*A.*	This man was observed with a blunderbuss on the side of the river the night of the Dacoity, and there is other strong presumptive proof, that he was concerned in the Mukra Dacoity: appears to be a spy of Mihrban's, and in his confidence.
110	Bacha, son of Lauljee.	Burdwanee in Pergunna Raja Moorsun.	*SearMurwa.* Calls himself a Rajpoot, aged 30.	6, 9, 26, 53		24	*	*	*	With No. 109	*A.*	This man I think there is strong presumption, was concerned in the Mukra Dacoity. He has been fully recognized before the Magistrate.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c.* (*Continued.*)

Number of calendar.	Names of the prisoners, and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Sing to have been in the Mukra Dacoity.	Do. do. by Soudanee Kahar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
111	Bussawun *alias* Tharoo, son of Doorjun.	Burdwan in Pergunna Muthoora.	*SearMurwa.* Calls himself a Rajpoot, aged 35.	9, 55	10	24	*	*	*	With No. 109.	*A.*	This man, I think there is strong presumption, was concerned in the Mukra Dacoity, although imperfectly recognized by any of the witnesses, except Soorut Singh, Soudanee, and Heera prisoner.
112	Mudaree *alias* Modhee, son of Pamhoo.	Burdwan in Pergunna Muthoora.	*SearMurwa.* Calls himself a Baree, aged 32.	55		23, 24	*	*	*	With No. 109.	*A.*	This man, I think there is strong presumption, was concerned in the Mukra Dacoity, and has been fully recognized before the Magistrate.
113	Bhitchook, son of Teka.	Sasseram in Pergunna Lucknow.	*SearMurwa.* Calls himself a Baree, aged 20.		9		*	*	*	Apprehended in Thana Hilsa. See Witnesses Nos. 80 and 81.	*A.*	This man, I think there is strong presumption, was concerned in the Mukra Dacoity, and has been fully recognized before the Magistrate.
114	Soojan Singh, son of Dhunee.	Dubree in Pergunna Lucknow.	*SearMurwa.* Calls himself a Jaut, aged 25.							With No. 113.	*A.*	This prisoner does not appear to have been with Mihrban last year, but to have joined him lately from the west.

115	Musst. Emerty *alias* Pyjooneea, wife of Mihrban Singh.	Munkapoor in Pergunna Baraitch.	*SearMurwa.* Calls herself a Rajpootin, aged 30.		9, 54, 55			*	With No. 2.		Appears to have accompanied Mihrban last year, and on other occasions. She is sister to No. 18, and was wife to Kullunder, a former leader.
116	*Musst.* Mahooree, 2d wife of Do.	Poorwa.	*SearMurwa.* Calls herself a Rajpootin, aged 20.						With No. 2.	*A.*	This woman, it appears, was married to No. 1, just before he set out on the present expedition. She is daughter to No. 18.
117	Musst. Mereeah, wife of Motee.	Bejpoor in Pergunna Atroula.	*SearMurwa.* Calls herself a Buheteea, aged 20.	9, 39					With No. 2.	*A.*	This woman probably accompanied her husband last year with Mihrban.
118	Musst. Mundiah, daughter of Chera.	Bubungawan.	*SearMurwa.* Calls herself a Koormin, aged 10.		54				With No. 2.	*A.*	A servant of No. 115, and probably accompanied her last year, but is quite a child. When the gangs separated at Arungabad, she went with Bhoop and his followers, which proves that the gangs were in close communication with each other.
119	Musst. Beeputeea, daughter of Mohonee.	Poorooah in Pergunna Gonra.	*SearMurwa.* Calls herself a Koormin, aged 35.						With No. 2.	*A.*	It is not clear who she is, but admits being of Mihrban's party.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with* are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
120	Musst. Seedhnee, wife of Dulthummun.	Poorooah in Pergunna Gonra.	*Sear Murwa.* Calls herself a Koormin, aged 30.		36					With No. 2.	*A.*	This woman admitted before the Magistrate that she accompanied her husband last year eastward, and was taken with Mihrban's party.
121	Musst. Muriah, wife of Ooda.	Poorooah in Pergunna Gonra.	*Sear Murwa.* Calls herself a Koormin, aged 28.							With No. 2.	*A.*	It appears her husband was of Mihrban's party, but made his escape.
122	Musst. Madiah, wife of Bhitchook.	Gonry in Pergunna Atroula.	*Sear Murwa.* Calls herself a Koormin, aged 40.							With No. 2.		Came with her husband, and probably accompanied him last year.
123	Musst. Looroo, wife of Alha.	Dheeky.	*Sear Murwa.* Calls herself a Rajpootin aged 50.			54				With No. 2.	*A.*	Is one of Mihrban's party, and mother to Buljeet (14), and probably accompanied the gang last year.

124	Musst. Jykoonwur, wife of Baulkishoon.	Poorooah in Pergunna Gonra.	*SearMurwa.* Calls herself a Lodhee, aged 45.					With No. 2.	*A.*	It does not appear who this woman is, but she was taken with Mihrban's party, and accompanied them.
125	*Musst.* Rooply, wife of Heera.	Khas in Pergunna Baraitch.	*SearMurwa.* Calls herself a Jaut, aged 20.					With No. 2.	*A.*	The wife of Heera (22), and accompanied him last year.
126	Musst. Dhounee, wife of Bussunt.	Etau in Pergunna Baraitch.	*SearMurwa.* Calls herself a Gwalin, aged 50.	38		*	*	With No. 2.	*A.*	Appears to have accompanied Mihrban's party last year.
127	Musst. Sooknee, wife of Anundee.	Achulpoor in Pergunna Baraitch.	*SearMurwa.* Calls herself a Barin, aged 50.					With No. 33.	*A.*	This woman appears to belong to Mihrban's party.
128	Musst. Soobhuneea, wife of Bhundhoo.	Etau in Pergunna Baraitch.	*SearMurwa.* Calls herself a Rajpootin, aged 40,	41		*		With No. 2.	*A.*	Is the wife of No. 6, and it appears accompanied Mihrban's party last year.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c.* (*Continued.*)

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kahar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	REMARKS.
129	Musst. Choteky, wife of Doorga.	Dubree in Pergunna Burah.	*SearMurwa.* Calls herself a Koormin, aged 25.			51				With No. 3.	*B.*	Is of Mihrban's party.
130	Musst. Goinda, wife of Bhoop Singh.	Dubree in Pergunna Burah.	*SearMurwa.* Calls herself a Rajpootin, ag. 25.							With No. 3.	*B.*	Wife to Bhoop (3) Sirdar.
131	Musst. Punya, wife of Deally.	Dubree in Pergunna Burah.	*SearMurwa.* Calls herself a Koormin, aged 40.			23				With No. 3.	*B.*	It is not probable that this woman was of Mihrban's party last year, as she now belongs to that of Bhoop.
132	Musst. Desooree, wife of Ahmee.	Lodha in Agra.	*SearMurwa.* Calls herself a Koormin, aged 60.							With No. 3.	*B.*	It is not probable that this woman was of Mihrban's party last year.

133	Musst. Parbutee, daughter of Munooan.	Dherpoora.	*Sear Murwa.* Calls herself a Jaut, aged 10.						With No. 3.	*B.*	It is not probable that this woman was of Mihrban's party last year.
134	*Musst.* Goura, wife of Suljoo.	Doolapoor.	*Sear Murwa.* Calls herself a Rajpootin, aged 50.						With No. 3.	*B.*	It is not probable that this woman was of Mihrban's party last year. She is mother to No. 133.
135	Musst. Phoola, wife of Jokhun.	Dherpoora.	*Sear Murwa.* Calls herself a Koormin, aged 40.						With No. 3.	*B.*	It is not probable that this woman was of Mihrban's party last year.
136	Musst. Purmeea, wife of Gopeenath.	Poorooah in Pergunna Goura.	*Sear Murwa.* Calls herself a Jaut, aged 25.						With No. 3.	*B.*	It is not probable that this woman was of Mihrban's party last year.
137	Musst. Khujoorcea, wife of Khurugject.	Poorooah in Pergunna Gonra.	*Sear Murwa.* Calls herself a Jaut, aged 30.						With No. 3.	*B.*	It is not probable that this woman was of Mihrban's party last year.

Statement A, shewing the Names of Prisoners, by what Witnesses recognized, &c. (Continued.)

Number of calendar.	Names of the prisoners, and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
138	Musst. Mekheea, wife of Doorjan.	Poorooah in Pergunna Gonra.	*Sear Murwa.* Calls herself a Jaut, aged 30.							With No. 3.	*B.*	Apprehended with Munsa's party.
139	Musst. Suhjoe, wife of Laljeet.	Juttamusee near Bhurutpoor.	*Sear Murwa.* Calls herself a Jaut, aged 50.		9					With No. 3.	*B.*	Apprehended with Munsa's party.
140	Musst. Heereea.	Agra.	*Sear Murwa.* Calls herself a Jaut, aged 50.							With No. 33.	*A.*	She appears to be mother-in-law to Heera, and accompanied Mihrban's party.
141	Musst. Muriha, wife of Moolha.	Kuhra in Pergunna Kolooapoor.	*Sear Murwa.* Calls herself a Koormin, aged 60.							With No. 3.	*B.*	Appears to belong to Munsa's party.

142	Musst. Soogundheea, wife of Murdun.	Dubree in Pergunna Burrah.	*SearMurwa.* Calls herself a Barin, aged 35.				With No. 3.	*B.*	Appears to belong to Munsa's party.
143	Musst. Ojbee, wife of Nanhoo.	Etua in Pergunna Seetapoor.	*SearMurwa.* Calls herself a Koormin, aged 45.				With No. 106.	*A.*	Appears to belong to Munsa's party.
144	Musst. Dhounee, wife of Teka.	Etua in Pergunna Seetapoor.	*SearMurwa.* Calls herself a Koormin, aged 40.				With No. 106.	*A.*	Appears to belong to Munsa's party.
145	Musst. Khereeah, daughter of Nanhoo.	Etua in Pergunna Seetapoor.					With No. 106.	*A.*	Appears to belong to Munsa's party.
146	Chotay, son of Mayree.	Shahgunge attached to Adjoodheea.	Kuhar.			8	With No. 33.	*A.*	This man does not appear to have accompanied Mihrban last year: but admits having been with him this year.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c.* *(Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with * are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	Remarks.
147	Ramdeen, son of Dookhe.	Ghuwas in Pergunna Ajoodhcea.	Kuhar.							With A No. 1.	A.	This man does not appear to have accompanied Mihrban last year. Admits having been with him this year.
148	Bukhtour, son of Ramye.	Khas, Oude.	Kuhar.		27, 39	54				A No. 1.	A.	Appears to have accompanied last year, and to have been privy to the Dacoity.
149	Kulleean, son of Bukhtour.	Shahagunge attached to Ajoodheea.	Kuhar.							A No. 1.	A.	Admits having accompanied Mihrban this year.
150	Bukhtour, son of Toree.	Khas, Ajoodheea.	Kuhar.		55					A No. 1.	A.	Admits having accompanied Mihrban this year.

151	Hoolas, son of Torul.	Muhooa-damur.	Kuhar.	35, 51	36, 55	*	With No. 2.	A.	Appears to have accompanied Mihrban last year, and to have been privy to the Dacoity.
152	Mayree, son of Buldar.	Muhooa in Pergunna Bungeah.	Kuhar.	10, 25, 54			With No. 2.	A.	Appears to have accompanied Mihrban last year, and to have been privy to the Dacoity.
153	Koolahul, son of Toree.	Poorooah in Pergunna Gonra.	Kuhar.	10, 19			With No. 2.	A.	Admits having accompanied Bhoop Koormee this year, who is a follower of Mihrban.
154	Pershadee, son of Chumroo.	Poorooah in Pergunna Gonra.	Kuhar.				With No. 2.	A.	Admits having accompanied Lekhye (40), a follower of Mihrban this year.
155	Duhpelooah, son of Sheobux.	Khorasah in Pergunna Gonra.	Kuhar.	10, 23, 38, 52, 54, 55	44		With No. 2.	A.	It appears this man was with Mihrban last year.

Statement A, *shewing the Names of Prisoners, by what Witnesses recognized, &c.* *(Continued.)*

Number of calendar.	Names of the prisoners and their fathers.	Place of residence.	Caste and ages.	Witnesses who recognized the prisoners before the Magistrate only as being with Mihrban last year.	Witnesses who recognized before the Court of Circuit and Magistrate as being with Mihrban last year.	Witnesses who doubtfully recognized the prisoners as being with Mihrban last year.	Those marked with* are said by Soorut Singh to have been in the Mukra Dacoity.	Do. do. by Soudanee Kuhar.	Do. do. by Heera.	With whom apprehended, and where.	Belonging to what Sirdar.	REMARKS.
156	Lceluck, son of Buldee.	Khas, Bungla.	Kuhar.		54					With No. 3.	*B.*	Admits having come with Bhoop this year.
157	Sudhaun, son of Pirtram.	Khas, Bungla.	Kuhar.		9, 10, 39, 41, 54, 56	37				With No. 3.	*B.*	It appears this man was with Mihrban last year; but this year he came with Bhoop.
158	Sookram, son of Kulloot.	Nowabgunge near Adjoodheea.	Kuhar.			51, 55				With No. 3.	*B.*	Admits having accompanied Bhoop this year.
159	Oree, son of Mayree.	Khas, Bungla.	Kuhar.			54				With No. 3.	*B.*	Admits having accompanied Bhoop this year.

160	*Hoolas*, son of Bhooal.	Bunkutta in Pergunna Gonra.	Kuhar.	6, 7, 8, 9, 10, 23, 36, 38, 40, 41, 55			*	*	With No. 3.	*B.*	Clearly proved to have been with Mihrban last year, and described by witnesses as an opium eater.
161	Oree, son of Zorawur.	Nowabgunge in Pergunna Gonra.	Kuhar.	9, 43, 55					With No. 3.	*B.*	Admits having accompanied Bhoop this year, and it appears was with Mihrban last year.
162	Deena, son of Poorye.	Bunkutta in Pergunna Gonra.	Kuhar.	10, 52, 54, 55	37, 51				Apprehended at Soolerah. See witness 83.	*A.*	Was, it appears, with Mihrban last year; and admits having accompanied him this year.
163	Shunker, adopted son of Bhyro Gyawal.	Gya.	Mahooree Buneea.						Apprehended in Gya.		Does not appear to have had any concern with the robbers, but to have followed them, thinking them Gya pilgrims.

AN INDEX

TO

THE PRINCIPAL MATTERS.

ABORTION, PROCURING.

1 Conviction of causing the death of a pregnant woman in an attempt to procure abortion. Sentence, seven years imprisonment. Case of Musst. Nundoo and others. 335

2 It is irregular, under the Court's circular order dated the 31st of December 1824, for police officers to prosecute an enquiry into a case of abortion, though the enquiry originated in the discovery of a murdered infant; the one case having no connexion with the other. On conviction of destroying a fœtus (the woman not being quick with child) the Court of Nizamut Adawlut deemed the punishment of six months imprisonment, which the accused had already undergone, to be sufficient. Musst. Dhunkoowuree's case. 464

ACCESSARY.

1 On a charge of murder, one prisoner convicted of being an accessary after the fact, and of concealing his knowledge thereof, sentenced to imprisonment in banishment to another district for fourteen years: the other acquitted for want of proof, and released. Case of Nuvul Gour Rajpoot and Dhowkul Junghara. 372

ACCOMPLICE.

1 Two prisoners convicted of wilful murder sentenced to suffer death, and a third, convicted of instigating, aiding, and abetting the said murder, to imprisonment and transportation for life. Case of Anundee Chouheen and others. 5

ACQUITTAL.

1 The prisoners were charged with the murder of a Burkundaz; but it appearing that the deceased and another Burkundaz had in cold blood put to death a villager, whom they had seized on a criminal charge, after they had slain a person who had come to his rescue, and while they were under no reasonable apprehension, the Court directed that the prisoners should be discharged. Case of Hurdeo and others. 327

2 The prisoner, having wounded the prosecutors, who entered his house, and attempted to seize him without a legal process, was not sentenced to any punishment. Kurruckjeet, *alias* Khugee's case. 407

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1 The prisoner being convicted of administering a deleterious drug to the prosecutor, with intent to render him insensible, and to rob him of his property: sentenced to imprisonment for eight years, though the robbery was not completed. Bussawun *alias* Bhuwani Deen's case. 359

ADULTERY.

1 Murder from jealousy. There being reason to believe, that an adulterous intercourse subsisted between the deceased and the prisoner's wife, capital sentence, under the circumstances of the case, was commuted to imprisonment for life. Kumlaput's case. 98

2 Prisoner convicted of the murder of his wife by reason of her adultery. The Court, believing the alleged adultery, under all the circumstances of the case, sentenced him to imprisonment for life. Nunda's case. 167

3 To justify a man in killing his wife and her paramour, according to the Moohummudan law, it is not necessary that he should see them in the act of adultery; presumption of it arising from situation is sufficient. Bhuja's case. 171

4 The prisoner convicted of killing his wife by cutting her throat with a razor, (which he obtained from a house close by,) after she had been committing adultery with a stranger, but at a time when the homicide was not justifiable in law; sentenced to 7 years imprisonment. Kalachand's case. 235

5 The prisoner detected his wife in the act of adultery, and the next morning, on her attempting to justify her conduct, killed her in a fit of passion. Sentence, under all the circumstances of the case, imprisonment for life. Mooktaram Ghose's case. 237

6 The prisoner being charged with the murder of his brother's wife, and the presumption from the evidence being that he put her to death while in the act of adultery, capital punishment remitted, and sentence, imprisonment for life. Bukshea Dhanook's case. 419

7 According to the intent and spirit of Section 6, Regulation XVII. 1817, it is equally requisite, that in charges of adultery the husband should appear as the prosecutor, whether the person prosecuted be the adulterer or the adulteress. Case of Panchoo and others. 421

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ADVOCATE GENERAL, (OPINION OF.)

See pp. 114, 119.

AFFRAYS.

1 That a party engaged in an affray was not the aggressing party, is no ground for a remission of sentence; though the Nizamut Adawlut, in awarding punishment, may no doubt admit the circumstance to operate in mitigation. Case of Umroodh Thakoor and others. 339

2 A conviction of affray attended with homicide and wounding. Prisoners three and four, who inflicted wounds, and were most active in the affray, sentenced to imprisonment for ten years: one and two, as instigators and leaders in the affray, to imprisonment for seven years: and the remaining prisoners, who were engaged in the affray, to imprisonment for five years with labour. Case of Bholanath Ghose and others. 370

3 Conviction of affray, attended with the murder of a slave. The price of the slave declared to be due from the *Aukila* of the principal offender, and himself to be liable to *Acoobut*, and the aiders and abettors to *Tazeer*. Case of Hussein Ali and others. 381

4 Two individuals (youths), convicted of aiding in an affray, in which an Havildar was beaten, and subsequently died from the effect of the blows; sentenced to one year's imprisonment only, the affray having been produced by the misconduct of the sepoys. Case of Sobhan Lushker and Manick Biswas. 492

AFFRAY WITH MURDER.

1 Conviction of affray and murder, in resistance of a civil process. Sentenced; one to imprisonment for life in the Allipore jail; three to imprisonment with labour for 14 years; and the remaining prisoner to imprisonment for seven years with labour. 387

AGGRAVATION.

1 The prisoner convicted of a river Dacoity, unattended with aggravating circumstances, but sentenced to 39 *corahs*, and imprisonment in transportation for life, in consideration of his being a *Chowkeedar*, and his having previously stolen the boat on which the Dacoity was committed. Wuzeer's case. 150

APPEALS.

1 Section 5, Regulation III. 1821, construed as intended to limit the period of appeal merely as it relates to appellants, without restricting the discretionary authority of supervision possessed by the superior Courts; and the Nizamut Adawlut held, that it is not necessary for a Court of Circuit to furnish the Magistrate with a copy of the petition of appeal against his proceedings, though a copy of the order passed in appeal should be furnished. Case of Himmut and Hergopal. 221

ASSAULT.

See CORPORAL PUNISHMENT, No. 2.

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ASSAULT WITH INTENT TO KILL.

3 The prisoner, a Burkundaz, in a quarrel with the Darogha, fetched from his house a blunderbuss (not proved to have been loaded), with which he threatened to shoot him: sentenced for this offence to six months imprisonment, in addition to the period (nearly a year) during which he had been already confined. Tegh Ali Khan's case. 402

ATTEMPT TO MURDER.

1 A sepoy on guard convicted of an attempt to assassinate (motive unknown) a Magistrate in the exercise of his duty, by presenting a musquet at his body, and, on its missing fire, endeavouring to draw his sword for the same purpose, sentenced to imprisonment for life in the Allipore jail. Buljeet Singh's case. 357

BAIGARS.

1 The prisoners pleading that they had quarrelled with the prosecutor about *baigars*, the Court directed that an enquiry and report should be made as to the acceptation of the term. Case of Chintamun and others. 97

2 Prisoner convicted of striking a person whom he wished to seize as a *baigar*, and who, in endeavouring to escape, fell into a well and was drowned. Sentence, five years imprisonment. Dowlut's case. 396

3 A sepoy, convicted of causing the death of a man whom he had seized as a *baigar*, by beating him with a stick and his fists: sentenced to three years imprisonment. Hurruk Singh's case. 469

BURGLARY.

1 The prisoner being charged with burglary and theft, the Court, with reference to all the circumstances of the case, convicted him of assault and outrage, and sentenced him to seven years imprisonment. Suleem's case. 333

2 A prisoner having been sentenced to 14 years imprisonment for the offence of burglary, with attempt to steal, unaccompanied by any aggravating circumstances, on the ground of his being a notoriously bad character, the Court of Nizamut Adawlut reduced the term to seven years, it not appearing that the prisoner, though of bad character, had ever been before convicted. Poorun's case. 400

CIRCULAR ORDERS.

See Note, p. 329.

CIVIL SURGEONS.

1 The circular order of the Court, dated 3d of August 1814, directing that the examination of the civil Surgeon relative to the real or assumed insanity of a prisoner should be taken on oath, is equally applicable to their depositions as to violent or unnatural deaths. Musst. Ludroun's case. 213

See EXAMINATION, No. 1. MUTE, No. 2.

COMMITMENT.

1 Where one prisoner is committed to the Court of Circuit, all implicated in the same case should be committed also. 396

2 *See* Note in pp. 422, 423.

3 In a case of theft, attended by murder, the Magistrate committed one of the persons concerned, on the simple charge of theft, absolving him from participation in the murder; and in another case of theft, attended by burglary, committed on the same night, in which the same individual was concerned, he made no commitment, but appended his proceedings to the former case. The Court of Nizamut Adawlut, deeming these proceedings irregular, quashed them, and directed that the prisoner should be committed on the whole of the first and also on the second charge. The Circuit Judge was at the same time informed, that he should himself have quashed the commitment, with the concurrence of one of his colleagues at the sudder station. Illahya's case. 457

COMMUTATION OF SENTENCE.

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CONCEALMENT OF MURDER.

1 A wife's concealment of the murder of her husband, by her paramour, without however her participation or assistance, punished with seven years imprisonment. Case of Hazaree and Musst. Luchmee. 75

CONFESSION.

1 Prisoner convicted, on his own confession solely, of having killed his nephew, who had committed adultery with his wife. Sentenced to seven years imprisonment, as, though he confessed the act was premeditated, yet the means used were only two blows, with a moderate sized stick, and the meeting with the deceased was accidental. Poorun Doss's case. 32

2 It being proved on the trial of a prisoner charged with murder, that he had been

desired by the police officer to fear not, but to tell the truth: held that this is not sufficient to invalidate a confession made by him, and corroborated by circumstances. Hureesingha's case. 33

3 Prisoner confessed at the Thana, that he killed with an arrow a man who had come to him for a debt, and who would neither let him eat nor drink. There being no other evidence, the capital punishment was remitted, in consideration of the provocation. Doctrine of circuit law officer overruled, that prisoner having subsequently stated before the Magistrate the death to have been accidental, such statement should be received, as being most favourable to the prisoner. Heeraram Cheith's case. 39

4 The depositions of two private individuals to the confession made before apprehension, and not reduced to writing, of a girl eleven years of age, held sufficient for her conviction by the Moohummudan law; but rejected by the Nizamut Adawlut, especially with reference to the tender years of the prisoner. Mussummaut Nunhya's case. 45

5 Case of conviction under the Moohummudan law of homicide by misadventure, and prisoner declared liable to *Deeut*, but released by the Nizamut Adawlut; his confession that he killed the deceased at night, mistaking him for a dog or jackall, being corroborated by the only witness in the case. Mohun Lounda's case. 67

6 It is not sufficient, under the Court's circular orders, that the confession of a prisoner should be verified before the Magistrate; but it is necessary that the confession should be originally taken and written down in the presence of such officer or his European assistant. Case of Cashee Manjee and others. 70

7 Prisoner confessing that he killed his wife, not in the act of adultery, but on receiving abusive language, when begging her to desist from her criminal intercourse with another man; capital punishment remitted, in consideration of the provocation. Sentence, imprisonment for life. Phoolchund's case. 79

8 Case of a woman tried for throwing herself and her two children into a river, where the latter were drowned. Her Thana confession being the chief evidence against her, and that containing an expression which might be construed to mean that she accidentally fell into the river, the Court held that she was entitled to the benefit of the favourable interpretation. Acquitted accordingly. Musst. Kurwya's case. 147

9 Prisoner found guilty of privity to Dacoity, on his own confession, by the *futwa*, but released by the Nizamut Adawlut, it appearing that he had been induced to confess by a promise of pardon from the *mohurrir* of the Thana, and of being appointed a *burkundaz*. Case of Netra and others. 166

10 The prisoner confessed the homicide of his brother, after having received a blow from him; and the *futwa* therefore finds that the act was done in self-defence. There was no eye-witness; but from other circumstances, independent of the confession, the Court inferring wilful murder, sentenced him to imprisonment for life. Runjeet's case. 183

11 It is irregular in a Judge of Circuit to enter into any examination of a prisoner as to his confession, beyond his simple avowal or denial of the same. Case of Shah Haree and others. 185

12 There being no evidence against a prisoner but his own confession, in which he admitted having killed his wife by repeated sword wounds, after she had wounded him, and his person exhibiting two wounds; the Court, deeming his defence probable, sentenced him to five years imprisonment. Incha Kolee's case. 256

13 A confession made voluntarily before a police officer, not held to be invalidated by the fact of a former confession made to a person not being a police officer under promise of release, nor by the non-observance of the rule contained in clause 3, section 19, Regulation XX. 1817. Ekadussee Kande's case. 291

14 In the case of a confessing prisoner, it is requisite that the confession should be read and explained to the prisoner at the time of taking the answer "guilty or not guilty," and that the prisoner be then questioned, as to its authenticity or otherwise. It should also be read and explained to the subscribing witnesses. Musst. Souree's case. 351

15 A prisoner confessing that he killed his wife in the act of adultery; there being no positive proof besides his confession, and the circumstantial evidence being rather in support of than against it, the Court directed his release. Chait Ram's case. 408

16 The only evidence against a prisoner being his own confession, that he killed the deceased while in the act of adultery with his (the prisoner's) wife: held that the confession should be taken altogether, and the prisoner released. Purshadoa's case. 456

17 The prisoner, being apprehended on the charge of murdering his wife, confessed at the Thana having killed her in the act of adultery. The *futwa* of the law officers of the Nizamut Adawlut find the fact to be justifiable homicide; but the Court overruled this *futwa*, and sentenced the prisoner to perpetual imprisonment; he having denied his Thana confession, and pleaded ignorance as to the manner of his wife's death, both before the Magistrate and the Court of Circuit. Mooteea *alias* Gunga Dhobee's case. 472

See EVIDENCE, No. 3. MISSING PERSONS, No. 2.

CONSTRUCTION.

1 Held by a majority of the Court of Nizamut Adawlut, that the proclamation prescribed in Regulation IX. 1808, does not apply to a case of robbery and murder, originating in a private feud, where plunder was not the primary object of the offenders; but held, nevertheless, that proclamation having been issued, the prisoners were entitled to the benefit of the old rule in the Regulation above cited, by which they were exempted from a capital sentence, and declared liable only to the penalty for contumacy. Case of Purtab, Mohra, and Sookhram. 248

2 Held that the provision contained in clause 1, section 6, Regulation XVII. 1817, (which requires the law officer to declare only whether the prisoner is legally convicted,) is not applicable to a case of rape attended by robbery. Pooryc Lode's case. 267

3 Held that the provisions of Regulation XVI. 1825, do not alter those of Regulation XV. 1814, by which the Court of Circuit is competent to reduce the punishment of prisoners convicted of two offences to fourteen years imprisonment. Case of Kullooa and others. 459

CONTUMACY.

1 It is essential to conviction on a trial for contumacy, that it be proved the proclamation was made by beat of drum at every Thana, within the Magistrate's jurisdiction; and in a trial for this offence, a *futwa* from the law officer is not requisite. Proclaimed persons having been tried on the charge of dacoity and murder, for which they were proclaimed, and not on the charge of contumacy, and the Court having ruled that they should have been tried on the latter charge first, it was determined, on their being acquitted of the charge of contumacy, that they should be tried *de novo* on the charge of dacoity and murder. Case of Akaloo and Goordial. 87

See CONSTRUCTION, No. 1.

CORPORAL PUNISHMENT.

1 On conviction of wounding with intent to kill, held that to award stripes would be inconsistent with the order declaring corporal punishment generally inappropriate in cases of culpable homicide. Luchmun Geer's case. 269

2 In a case of assault attended by homicide and beating, the Judge of Circuit recommended that stripes should be inflicted; but the Nizamut Adawlut, deeming that punishment inappropriate, sentenced the prisoners to imprisonment only. Case of Jeewun and others. 323

CORRUPTION.

1 The prisoner was charged with the corrupt receipt of 1500 Rs. in having, while in the situation of *Kotwal*, by his private influence, procured the office of a Darogha for an individual on a bargain for the above sum. The receipt of part of the sum in question was established, and he was unable to prove on what account; but the prisoner was acquitted by the Nizamut Adawlut, the money having been paid long after his secession from office, and there being no sufficient proof of a corrupt agreement. Khyrun Shah Khan's case. 448

CRUELTY.

1 The prisoner convicted of blinding his wife with a hot iron; sentenced to fourteen years imprisonment with labour. Puharee's case. 427

CULPABLE HOMICIDE.

See HOMICIDE, CULPABLE.

DACOITY.

1 Case of a gang of 163 persons of the *Shighalkhor* or *Budhek* cast, who issuing from their haunts in the jungles of the Oude territory, assumed the garb of a Raja and his retinue proceeding on a pilgrimage, entered the Company's territory, and attacked a boat laden with treasure, which they carried off, killing one man, and wounding ten, and having made good their retreat unsuspected, were proceeding, in the following year, on a similar expedition, when they were apprehended. Being tried for the above offences, the leader was sentenced to be hanged. Of his associates, 36 convicted of being accomplices in the above robbery, sen-

tenced to receive 39 *corahs*, and to be imprisoned in transportation for life. Four convicted of privity to, and connivance in the said robbery, and of being professed Dacoits, to receive 30 *corahs*, and to be imprisoned in banishment for 14 years, and then to find security for good behaviour. 76 convicted of going forth to commit robbery, and of being professed Dacoits, to be imprisoned in banishment for 7 years, and then to furnish security. 15 convicted of going forth to commit robbery, to be imprisoned in banishment for 7 years. 31 (women) acquitted. The remaining prisoner, though convicted of having accompanied the robbers, was found to be insane, and ordered to the hospital. Case of Mihrban and others. 125

See PRACTICE, No. 7. 11. AGGRAVATION, No. 1. EVIDENCE, No. 12. PROMISES, No. 2. CONSTRUCTION, No. 3.

DEFINITION.

1 Case of a gang of twenty men armed with clubs, who secretly effected an entry into a house, and afterwards maltreated the inmates; held that this is sufficient to constitute the crime of robbery by open violence, as defined in clause 1, section 3, Regulation LIII. 1803. Case of Oopashoo and others. 217

See ROBBERY, No. 5.

DEFLOWERING A YOUNG GIRL.

1 The prisoner (a youth) punished with fifteen stripes of the rattan, and six months imprisonment, on conviction of carnally knowing a girl, aged eight years; the consent of one so young being deemed immaterial. Lulooa's case. 452

DHURNA.

1 Case of five prisoners (*Fakeers*) convicted of sitting *Dhurna*, and assisting in the suicide of one of their companions: sentenced, in consideration of their gross ignorance, and all the circumstances of the case, to five years imprisonment each. Case of Khuchury Shah and others. 409

DRUNKENNESS.

See HOMICIDE, CULPABLE, No. 10.

EMBEZZLEMENT.

1 The prisoners convicted of converting to their own use the sum of 2500 rupees, belonging to Government: sentenced, the one to two, and the other to one year's imprisonment. Case of Rujub Ali and Pitumber. 277

2 A cash-keeper convicted of having removed a sum of money from the public treasure chest without authority, held to be guilty of a misdemeanour under the provisions of Regulation II. 1813: sentenced to one year's imprisonment in the civil jail, without labour or irons. Case of Goolab Rai and Sheo Pershad. 376

3 A Tuhseeldar convicted of making unauthorized advances to individuals in balance for one year, and supplying the deficiency in the public accounts by sums paid as revenue for the succeeding year, held guilty of embezzlement, and sentenced to one year's imprisonment for that offence. Gholam Akhee's case, 463

EUROPEAN.

1 The name of an European being indirectly introduced in a transaction for which a native is committed for trial, does not vitiate the trial under the circular orders of the 4th of Jan. 1811. Case of Gungaram and Imrut Lal. 73

EVIDENCE.

1 The evidence of a witness on a trial varying from that which, according to the Thana report, he was there stated to have given; held that such variation is not sufficient to invalidate it. Kullooa's case. 17

2 The evidence of a convict having been taken, with a view to the conviction of a prisoner charged with participation in a Dacoity for which such convict had already been sentenced, the Court ruled that his evidence was wholly inadmissible. Jey Singh's case. 25

3 Five boatmen convicted of murdering the person in charge of the cargo, on the confession of one individual of the crew to that effect, and on their own confessions that they had sold the cargo and appropriated the proceeds. Sentenced to imprisonment in transportation for life. The body of the deceased not found. Case of Sunaoolah and others. 28

4 Prisoner confessed at the Thana, that he killed with an arrow a man who had come to him for a debt, and who would neither let him eat nor drink. There being no other evidence, the capital punishment was remitted, in consideration of the provocation. Doctrine of circuit law officer overruled, that prisoner having subsequently stated before the Magistrate the death to have been accidental, such statement should be received as being most favourable to the prisoner. Heeraram Cheith's case. 39

5 The prisoner was charged with perjury in giving in a false schedule of his property, for the purpose of being admitted to sue as a pauper. Held that the recital of his having made oath, in the *rwobukaree* of commitment, is not sufficient evidence of the fact, and that the recorded evidence of witnesses in a civil court is not sufficient proof in a criminal trial as to the real value of his property. Byjnath Singh's case. 64

6 The prisoner confessing a murder, and pointing out human bones which he alleged to be those of the person murdered; held by the Nizamut Adawlut, that this is not a sufficient finding of the body to warrant a capital sentence; the bones not admitting of identification. Chundwa's case. 82

7 Prisoner declared guilty by the *futwa* of murder by poisoning. The Court of Nizamut Adawlut do not concur in the conviction, the only evidence of the murder being an alleged village confession, and the body of the missing person not having been found; but it being proved that the missing person was seen last in the prisoner's company, he was sentenced to be imprisoned for life, or until the missing person should appear, or his existence subsequently to his parting with the prisoner be ascertained. Chaitoo Telee's case. 84

8 In a case of confession of murder, and a corpse being found, admitted by the prisoner to be that of the person murdered, the Court did not deem the absence of proof as to its identity to be sufficient to bar a capital sentence. Jeorakhun's case. 104

9 The Court observed, that a wife should not be called upon to give evidence against her husband, except in a case of urgent necessity. Lurrye Chung's case. 149

10 The prisoner was declared by the *futwa* convicted of murder on strong circumstantial evidence; but, it being considered insufficient for his conviction by the Nizamut Adawlut, he was acquitted and released. Sallemoodeen's case. 158

11 Of two prisoners tried for murder, the first stated that the deceased was killed when in the act of theft, in company with himself and the second prisoner; the second prisoner denied this, and accused the first of having in his presence murdered the deceased. The Court, crediting the first statement, directed the discharge of the prisoners. Case of Koosha and Ashruf. 163

12 Two prisoners convicted by the *futwa* of Dacoity, on the direct evidence of the person robbed and his wife to recognition. But this testimony rejected by the Nizamut Adawlut, being unsupported by circumstantial evidence, and otherwise open to suspicion. Case of Ishree Tewaree and Omrao Singh. 165

13 A prisoner's Thana confession (not borne out by the evidence on record) that he had two other associates in a case of highway robbery, is not sufficient evidence of a "gang," so as to bring the case within the rule of section 3, Regulation LIII. 1803. Case of Lal Singh and Khewanee. 172

14 The prisoner was charged with having murdered his wife four years before. On being apprehended, he denied being the husband of the deceased, and assumed a feigned name. Sentenced to perpetual imprisonment, on conviction of the charge from circumstantial evidence, and proof of his identity. Jowahir *alias* Punchum's case. 175

15 The prisoner confessed the homicide of his brother, after having received a blow from him; and the *futwa* therefore finds that the act was done in self-defence. There was no eye-witness; but, from other circumstances, independent of the confession, the Court, inferring wilful murder, sentenced him to imprisonment for life. Runjeet's case. 183

16 Prisoner acquitted of the charge of murdering his concubine, in spite of strong suspicion against him arising from circumstantial evidence. Amanut Ally's case. 194

17 In a case of wounding, the *futwa* declared the prisoner not convicted, by reason of there being only one witness (besides the prosecutor) to the charge. The Court, seeing no reason to discredit the evidence, superseded the *futwa*, under section 4, Regulation XVII. 1817, and sentenced the prisoner to seven years imprisonment. Chundeedeen's case. 239

18 In a trial for murder, the circumstantial evidence consisting of enmity between the prisoner and the deceased, threats used by the prisoner, and concealment of and denial that he possessed any weapon, the proof was held insufficient to convict. Case of Adheen Singh and others. 271

19 The prisoner being arraigned on a charge of murder, was acquitted and released; the circumstantial evidence against him amounting to suspicion, but not to presumption of his guilt. Kishen Das's case. 318

20 In a case of extortion, the law officers held that those who contributed to the

extortioner's demands could not be admitted as witnesses; they being, in point of fact, plaintiffs in the cause; but the Nizamut Adawlut overruled this doctrine. Moomtaz Ali's case. 341

21 The prisoner (a person of respectable connexions and easy circumstances) being charged with the murder of a boy for the sake of his ornaments, the Court, deeming the motive assigned and the circumstantial evidence adduced insufficient for his conviction, directed his release. Panchkonree Rai's case. 345

22 The corpse of the prisoner's wife having been found with marks of strangulation and other violence, the prisoner stated that she had hung herself. On her disappearance, he stated, that she had run away; but the circumstantial evidence not being sufficient to bring home the charge of murder to the prisoner, he was released by order of the Nizamut Adawlut. Ramchura Guraun's case. 350

23 It is no sufficient reason for rejecting evidence to the defence, that the witnesses named by the prisoner had been accused before the Magistrate of participating in the offence charged, but released by that officer. Rampershad Sookul's case. 413

24 The only direct evidence against a prisoner charged with rape being that of the ravished girl, who was too young to be sworn, the Court directed the release of the prisoner. Leela Gwalla's case. 415

25 The fact of filing a forged deed in a court of justice by the person interested in establishing its contents, affords sufficient presumption that he uttered it knowing it to be forged. Bukhtawur's case. 454

26 The body of the prosecutor's wife was found hanging to a beam, inside her house, in the middle of the day, with evident marks of her having been strangled and ravished. The only evidence against the prisoner being that he was seen running from the house shortly before, in a state of agitation; held that this was insufficient for his conviction. Abhursa's case. 460

See MINORITY, No. 1. PRACTICE, No. 4. CONFESSION, No. 12. SUBORNATION OF PERJURY, No. 1.

EXAMINATION.

1 The circular order of the Court dated the 3d of August 1824, directing that the examination of the civil Surgeon relative to the real or assumed insanity of a prisoner should be taken on oath, is equally applicable to their depositions as to violent or unnatural deaths. Musst. Ludroun's case. 213

EXTORTION.

1 In a case of extortion, the law officers held that those who contributed to the extortioner's demands could not be admitted as witnesses; they being, in point of fact, plaintiffs in the cause; but the Nizamut Adawlut overruled this doctrine. Moomtaz Ali's case. 341

FINES.

1 Held that the Court of Nizamut Adawlut are competent to impose fines to an indefinite amount, commutable to a limited period of imprisonment. Case of Gungagobind Bunhoojea and others. 304

FORGERY.

1 To the offence of fabrication, punishable under Regulation XVII. of 1817, no writing is necessary. It is sufficient that the seal be forged, though the paper is blank. Case of Jyechund and others. 3

2 To antedate and postdate deeds being a common practice among the natives, the Court did not admit this fact to be evidence of forgery. Ramkunhai's case. 36

3 Prisoner having lent the sum of 51 rupees to a person since deceased, (whose bond he held on plain paper, bearing interest at the rate of 24 *per cent. per annum*,) forged and filed a stamped bond for the same amount, at 12 *per cent.* Held that this is an act of forgery not deserving of less than three years imprisonment. Chunder Deen Havildar's case. 95

4 The Mohurrir of a Thana, with a view to screen himself from the charge of having deputed a Burkundaz only to enquire into a case of theft, falsified the Magistrate's record, to make it appear that the Jemadar had been deputed in another case. Held that this is forgery, but of the lightest description. Sentence, six months imprisonment. Bhungee Lal's case. 99

5 To a conviction of forgery it is not necessary that the coins forged should be of base metal, or that the imitation should be of a coin being a legal tender of payment; provided it be current among the natives themselves. Case of Phudalee and Hurbuns. 177

6 A prisoner convicted of preparing an earthen mould, with a view to forgery of copper coin, sentenced to two years imprisonment. Case of Aratoon and others. 186

7 Altering a common receipt for rent, so as to make it appear like a receipt for

money due under a decree of Court, and uttering the same, punished by seven years imprisonment. Case of Nuwazee and Kurrcembuksh. 210

8 Prisoner convicted of having personated a Dewanny Chupprassy, and of having, with others, arrested the prosecutor by means of a forged summons. Sentenced, under the provisions of section 9, Regulation XVII. 1817, to imprisonment for three years. Andaroo's case. 354

9 Fabricating seals, and affixing them to plain papers for future use, with a fraudulent intent, held to amount to forgery. The first prisoner, convicted of fabricating such seals, and selling plain papers to which the said seals were affixed, sentenced to *Tushheer*, and seven years imprisonment with labour. 2d, 3d, 4th, convicted of privity to and concealment of the said criminal practices, sentenced to imprisonment for two years with labour. Case of Hunooman and others. 405

10 A Vakeel being in three cases convicted of altering or causing to be altered the value of a number of stampt papers, sentenced to be exposed by *Tushheer*, and to be imprisoned for ten years. Case of Bhondoo Lal and others. 466

See EVIDENCE, No. 25.

FORNICATION.

1 To slay fornicators detected in the act is allowable, according to the Moohummudan law, and a prisoner confessing he had killed his sister and her paramour under these circumstances, acquitted and released by the Nizamut Adawlut. Gholam Mullik's case. 48

FUTWAS.

1 A sentence of *Kissas* or retaliation against a prisoner tried for the murder of his wife is not legally barred by suspicion of her adultery; and a law officer who had given a *futwa* to that effect advised accordingly; though in awarding sentence, proved adultery may doubtless be taken into consideration by the Nizamut Adawlut. Abdoollah's case. 100

2 A law officer having declared in his *futwa*, as a ground for the acquittal of a prisoner, that he might have concealed his knowledge of a Dacoity from fear, and that it was inexpedient to punish him lest it should deter other offenders from giving information, the Court held that he had exceeded his duty, and that he should not have referred to matters having no connexion with Moohummudan law. Case of Anwar and others. 142

3 Prisoner convicted of wounding his wife in a fit of anger, of which wounds she died three months afterwards. *Kissas* declared to be barred by the *futwa* on a doubt as to the proximate cause of her death. But the Court, having no doubt that the death was caused by the wounding, sentenced the prisoner to confinement for life. Pukharea's case. 178

4 See Note, p. 192.

5 Held that a capital sentence may be passed under Regulation IV. of 1822, in spite of a *futwa* of *Deeut*. In this case the law officers gave a second *futwa*, declaring the prisoner liable to death by *Seasut* on conviction of *Shibha-i-umd:* and the prisoner was hanged under the peculiar circumstances of the case, though the corpse of the deceased was not found. Baboon Nutt's case. 257

6 The *futwa* of the law officer of a Court of Circuit reciting that the evidence of women alone is insufficient to prove a criminal charge, the judge referred the case; but the Court of Nizamut Adawlut acquitted, on the ground that, to prove a charge of receiving stolen property, it must be established that the receiver knew it was stolen at the time of his receipt of it. Case of Ikram and others. 325

7 The *futwa* of the law officer of a Court of Circuit having declared certain prisoners (convicts imprisoned for life) tried for assault and wounding, liable to *Tazeer* as well as *Hookoomut-i-udl:* held that the 6th section of Regulation IV. 1822, does not preclude the Judge of Circuit from awarding corporal punishment under clause 7, section 2, Regulation LIII. 1803. Case of Deen Ali Shah and others. 362

8 Under the Moohummudan law, a *futwa* of death by *Seasut* cannot be given except for murder, though some authorities recognize, in abstract terms, the right of the ruling power to extirpate evil doers generally. Chundoo Kandoo's case. 418

See EVIDENCE, No. 17. MOOHUMMUDAN LAW, No. 2. PRACTICE, No. 8, 14.

GANG ROBBERY.

1 A prisoner's Thana confession (not borne out by the evidence on record) that he had two other associates in a case of highway robbery, is not sufficient evidence of a "gang," so as to bring the case within the rule of section 3, Regulation LIII. 1803. Case of Lal Singh and Khewanee. 172

See DACOITY.

HOMICIDE, CULPABLE.

1 The prisoner having been struck by the deceased with a club, went home (a short distance) for his sword, and meeting with the deceased, who was returning home, killed him with the sword. Held that this was culpable homicide, and punished by five years imprisonment. Than Singh's case. 107

2 The prisoner, who was bedridden from rheumatism, threw a stool at his wife, in consequence of her abusing him, which killed her. Sentenced to five years imprisonment, for culpable homicide. Khoosroo's case. 155

3 Prisoner having struck the deceased a blow with a club in the passion of the moment, without previous enmity, in a quarrel about a *ponja*, the law officers convicted him of wilful murder, but the Court viewed it as a case of culpable homicide only. Soodun Moonda's case. 187

4 Case of a Chonkeedar convicted of culpable homicide, by using unnecessary severity towards a man whom he found in his master's house at night: sentence, three years imprisonment. Case of Purshun and Radhe. 262

5 A Zemindar (the deceased) required the services of his tenants (the prisoners), when they abused him, and he holding up his shoe as if to strike them, they committed an assault upon him, which occasioned his death. Held that this amounted to culpable homicide, punishable by five years imprisonment; chiefly with reference to the relative situations in life of the parties. Case of Mungta and Sair. 268

6 The prisoner ascended his neighbour's mangoe tree, and began to eat his fruit; and on being abused by the owner, immediately came down, and with three blows of his *kodalee*, or hoe, killed that person. At the recommendation of the Judge of Circuit, and under all the circumstances, capital punishment remitted, and sentence imprisonment for life. Bocha's case. 301

7 Prisoner convicted of culpable homicide, by inflicting a blow with a club on the head of a person with whom his master was struggling: sentenced to five years imprisonment. Pershaud's case. 307

8 Conviction of killing a thief with a club, no resistance having been made on his part, and no effort to seize him having been made by the prisoner: sentence, one year's imprisonment. Allah Bukhsh's case. 322

9 Prisoner convicted of beating a person (who trespassed on his field) so violently as to occasion his death: sentenced, under all the circumstances of the case, to two years imprisonment. Hoolasa's case. 423

10 The prisoner, in a drunken quarrel with the deceased, received a blow from him, and in consequence inflicted a wound on his groin with a knife, which caused his death: sentenced, under all the circumstances of the case, to five years imprisonment. Durreona's case. 453

11 Two Burkundazes convicted of killing a thief by repeated sword wounds, when the homicide was not necessary to his seizure or custody; sentenced to two years imprisonment. Case of Auzum Khan and others. 461

See AFFRAY, No. 2, 3. CONFESSION, No. 1. CORPORAL PUNISHMENT, No. 1, 2.

HUMAN SACRIFICE.

1 Three prisoners, inhabitants of the Jeyntea territory, convicted of having, at the instigation of the brother-in-law of the king of that country, forcibly seized a boy in the British territory for the purpose of offering him up as a sacrifice to the Hindoo idol *Kalee*. Sentenced to 14 years imprisonment with labour in banishment. Bukhtear and others. 108

See SUTTEE.

IDENTITY.

See EVIDENCE, No. 6, 8, 14.

INFANTICIDE.

1 The offence of abandoning her newborn child by its mother in a jungle, which caused the death of the child, punished by perpetual imprisonment. Bowul Bewah's case. 220

See MURDER, No. 16.

INSANITY.

1 Prisoner convicted of murdering a boy for the sake of his ornaments; but appearing to be insane at the time of his trial, he was ordered into confinement, with instructions that, on the recovery of his reason, the evidence taken against him should be explained to him, his defence taken, and the law officers called on for a second *futwa*. Zora's case. 12

2 Prisoner charged with the murder of his father. The Court of Nizamut Adawlut

were satisfied of his insanity, but the *futwa* of their law officers declaring the evidence taken before the Court of Circuit insufficient to establish the act charged, the Court ordered further evidence to be taken as to this point, not with a view to his conviction of any offence, but with reference to any order of detention it might be necessary to issue. Lal Khan's case. 68

3 In a case of supervenient insanity after the commission of a murder perpetrated by the prisoner while sane, the Court did not think fit to apply the rule contained in Regulation IV. 1822, the offence having been committed long prior to that enactment, but deeming the prisoner unfit to be set at liberty, directed his detention, until on its being certified that he might be released without danger, they should issue further orders regarding him. Oodit Agurdanee's case. 189

4 Case of a prisoner convicted of beating a girl on the head with a stone, which caused her death; no malice being proved or probable cause assigned, and the prisoner becoming mad shortly afterwards, the Court attributed the act to insanity. Lukhun Manjhee's case. 260

5 Under the Court's circular order dated the 8th of May 1820, it is not necessary to refer the cases of insane persons charged with murder, where the fact of the killing may not be proved. Goolaboo's case. 383

See CONFESSION, No. 4.

INTENT TO ROB OR MURDER.

See ROBBERY, No. 3.

JURISDICTION.

1 The offence of Dacoity taking place within the British territory, and part of the property plundered being found in the prisoner's house, out of the British territory, this was not considered sufficient proof of receipt within the British jurisdiction. Case of Jumai and others. 80

2 A person born in wedlock at Madras, his father being a German, and his mother a Scotchwoman, declared by the Advocate General to be a British subject, and amenable only to the Supreme Court; but ruled that the *onus probandi* as to his birth rests on the prisoner. Case of Robert Frederick Charles Mandeville, *alias* Robert Frazer, *alias* Fergusson. 111

3 A prisoner being charged with enticing away a boy, and robbing and attempting to strangle him; held that the robbery and attempt to strangle having occurred in Tirhoot, the trial should take place in that district, and not in the district of Behar, out of which the boy was enticed. Khekhur's case. 205

4 The crime with which the prisoners were charged, having been committed in an independent territory, and the authority for the trial of the prisoners required by Regulation V. 1809, not having been previously obtained, the trial was held to be illegal, and annulled, and the Magistrate ordered to apply for permission to commit the prisoners for retrial at the next ensuing sessions. The Court did not think proper to order the recommitment of some of the prisoners, against whom there appeared to be no sufficient evidence, and who, had the trial been legal, would have been regularly acquitted and released. Case of Umra Lodh and others. 393

KIDNAPPING.

1 Prisoners charged with kidnapping a child, of whom no trace could since be discovered, declared liable by the law officers to imprisonment until they restored the missing girl; but sentenced by the Nizamut Adawlut to a definite period of imprisonment, there being no reason to suppose that the girl had been murdered. Case of Musst. Munna and others. 66

2 A prisoner being charged with enticing away a boy, and robbing and attempting to strangle him; held that the robbery and attempt to strangle having occurred in Tirhoot, the trial should take place in that district, and not in the district of Behar, out of which the boy was enticed. Khekhur's case. 205

3 On conviction of child stealing, the Court awarded seven years imprisonment, the last three years, however, to be remitted, in case the prisoner should make such a discovery as might lead to the restoration of the missing child. Musst. Hichnee's case. 308

4 In a case of child stealing, it is competent to a Judge of Circuit to pass a definite sentence of four years imprisonment, and an eventual one of three in addition, should the child be not forthcoming, the whole term not exceeding seven years. Dursun's case. 447

See HUMAN SACRIFICE, No. 1.

LEPERS.

See SUICIDE, No. 1.

MASSACRE.

1 Case the of massacre of a whole family from motives of revenge: of twenty-three prisoners, tried for the crime, four sentenced capitally, fourteen to imprisonment for life in the Allipore jail, four to fourteen years imprisonment in banishment, and one acquitted. Case of Deokeea and others. 58

2 Case of the massacre of thirty-three individuals from motives of revenge. Three prisoners convicted of having been present aiding and abetting at the massacre, sentenced to imprisonment for life. Capital punishment not awarded; the evidence not being sufficiently distinct of their being actively engaged in the actual perpetration of it. Case of Khame and others. 173

MINORITY.

1 The principal evidence against the prisoner, a boy of 12 or 13 years of age, being furnished by his own voluntary confession, that evidence declared by the law officers to be insufficient for his condemnation, by reason of his non-age: but this doctrine overruled by the Court, and the prisoner declared to be fully convicted; and there appearing no other circumstance in his favour than his minority to render him a proper object of mercy, and it being proved that he was *doli capax* when he committed the crime, sentence awarded of imprisonment and transportation for life. Sudasookh's case. 2

2 The law officers of the Nizamut Adawlut acquitted the prisoner, in consequence of the *Ibra* of the prosecutor, and her non-age. The Court did not concur in the *futwa*, but judged themselves incompetent to punish. The wilful act of a person supposed to be in her non-age is, in *Moohummudan* law, considered accidental. Jye Munnee's case. 29

3 The minority of a witness is not sufficient to preclude him from being sworn, provided he have a competent sense of the nature of an oath. Hatim Ali's case. 85

4 Case of a boy aged fourteen, murdering a boy aged twelve, for the sake of his ornaments. Sentence, imprisonment for life. Hunsnath's case. 471

See MITIGATION OF PUNISHMENT, No. 4.

MISSING PERSONS.

1 Prisoners convicted of theft, and of having made away with the woman to whom the property belonged, under circumstances exciting a strong suspicion that they had murdered her. Sentenced to a specific term of four years imprisonment, and further to be confined until certain tidings of the missing woman should be obtained. Case of Peerkhan and others. 46

2 Prisoner declared guilty by the *futwa* of murder by poisoning. The Court of Nizamut Adawlut do not concur in the conviction, the only evidence of the murder being an alleged village confession, and the body of the missing person not having been found; but it being proved that the missing person was seen last in the prisoner's company, he was sentenced to be imprisoned for life, or until the missing person should appear, or his existence subsequently to his parting with the prisoner be ascertained. Chaitoo Talee's case. 84

3 Conviction of beating a missing person: but the Court not being satisfied that the injury received by the missing person was of such a nature as to occasion death: sentence, under the circumstances of the case, one year's imprisonment. Case of Mohun and Luchmun. 305

4 The prisoners being charged with making away with two individuals, who with their property had embarked on the prisoners boat, and had not been heard of since last seen in the prisoners company, pleaded that the missing persons had parted with them of their own accord. Although they had no evidence to their defence, the Court of Nizamut Adawlut did not deem the proof sufficient for their conviction, and they were acquitted. Case of Mahomed Hossein and others. 336

MITIGATION OF PUNISHMENT.

1 The prisoner convicted of highway robbery attended with wounding: but sentence mitigated to 14 years imprisonment, in consideration of his youth, the severe wounds he received in his attempt to commit the crime, and because the act proved against him appeared to have been his first offence. Bukhshee's case. 1

2 Sentence, on conviction of highway robbery, mitigated; the prisoners not appearing to be old offenders, and being in a state of ebriety at the time. Myya and Bhoowun Pasban's case. 24

3 Charge of murder by a blow with a *Koolharee*. It appearing that the deceased had been educated by the prisoner, to whom he was not related, and that the blow was struck on sudden provocation, without any premeditation or malice, sentence restricted to twelve months imprisonment. Phekoo Khan's case. 106

4 A prisoner convicted of murder, calling himself 14 years of age, and reported by the Circuit Judge to appear not more than sixteen, sentenced to perpetual imprisonment. Khealeeram's case. 145

5 The prisoner killed his wife, and afterwards attempted to commit suicide, under a strong feeling of shame and disgrace at loss of caste, occasioned by an imputation of incest attaching to the deceased. Sentenced, under all the circumstances of the case, to imprisonment for life. Phuldar's case. 160

6 Prisoner convicted of the murder of his wife by reason of her adultery. The Court, believing the alleged adultery, under all the circumstances of the case, sentenced him to imprisonment for life. Nunda's case. 167

7 On a conviction of murder, capital sentence remitted, in consideration of the prisoner's being irritated by the deceased calling him a thief. Churun Das's case. 193

8 Prisoner convicted of murder, in revenge of the supposed exercise of witchcraft by the deceased; imprisoned for life. Capital sentence remitted, in consideration of all the circumstances of the case, and the uncivilized part of the country (Kumaoon) in which the crime was committed. Keshwa Dome's case. 196

9 Prisoner, aged sixteen years, convicted of theft, attended (without the privity and intent of the prisoner) with murder; sentenced, under all the circumstances of the case, to 30 rattans and seven years imprisonment. Shuhamut Khan's case. 331

10 The prisoner, in a sudden fit of passion, threw her young child into a well, by which it was drowned. In consideration of the suddenness of the act, and the absence of all malice: sentence, ten years imprisonment. Musst. Bhugteen's case. 375

11 In a trial for murder, it being proved that the deceased had entered the house of the prisoners' relation with an adulterous intent, and was beaten to death by them with sticks; and it not being clear that their purpose was to kill: sentenced, under all the circumstances, to five years imprisonment. Case of Pingwa and others. 395

12 The prisoner being convicted of murdering his wife and a procuress, and wounding a servant maid who aided her in an adulterous intercourse; also of wounding two men with whom she had committed adultery; capital punishment remitted on the ground of the provocation, and sentence, under the circumstances of the case, imprisonment for life. Putchkoury's case. 397

13 Case of five prisoners (*Fakeers*) convicted of sitting *Dhurna*, and assisting in the suicide of one of their companions: sentenced, in consideration of their gross ignorance, and all the circumstances of the case, to five years imprisonment each. Khuchury Shah and others. 409

14 Case of a prisoner convicted of the murder of his wife, under feelings of shame, excited by the violation of her person: sentenced, under all the circumstances, to imprisonment for life. Case of Mokhoo Ruffoogur and Bhekaree Singh. 411

15 The prisoner being charged with the murder of his brother's wife, and the presumption from the evidence being that he put her to death while in the act of adultery, capital punishment remitted, and sentence, imprisonment for life. Bukshea Dhanook's case. 419

See ADULTERY, No. 4, 5. AFFRAY, No. 1. HOMICIDE, CULPABLE, No. 6. MURDER, No. 2.

MOOHUMMUDAN LAW.

1 By the Moohummudan criminal law, persons who harbour adulterers are punishable by *Acoobut*. Case of Ramsoondur and others. 42

2 The prisoner was convicted of the murder of her infant bastard child. By the *futwa*, *Kissas* was declared to be barred, and *Deeut* only to be incurred, by reason of the maternal relationship. The Court held, that this was a personal distinction inconsistent with equal justice, and provided against by section 2, Regulation VIII. 1799. Sentence, imprisonment for life. Musst. Boondea's case. 161

3 To justify a man in killing his wife and her paramour, according to the Moohummudan law, it is not necessary that he should see them in the act of adultery; presumption of it arising from situation is sufficient. Bhuja's case. 171

4 See note, p. 192.

5 Under the Moohummudan law, a *futwa* of death by *Seasut* cannot be given except for murder, though some authorities recognize, in abstract terms, the right of the ruling power to extirpate evil doers generally. Chundoo Kandoo's case. 418

See CONFESSION, No. 4. FORNICATION, No. 1. FUTWAS, No 2. MINORITY, No. 2.

MOTIVE.

1 A prisoner convicted of murder, and sentenced to suffer death, though no malice

or other adequate motive for the homicide directly appeared on trial. Khodabuksh's case. 254

2 The prisoner having suddenly killed his infant nephew, without any apparent malice or motive, the Nizamut Adawlut sentenced him to be hanged; there being no proof of insanity. Khedoobund's case. 344

See INSANITY, No. 4.

MURDER.

1 A boy aged fifteen, convicted of murdering another boy for the sake of his ornaments: sentenced to ten years imprisonment. Dumree Dosadh's case. 20

2 A woman enraged at some trifling quarrel with her husband, murdered her own child, by cutting its throat with a knife, and then attempted her own life. Sentenced capitally; notwithstanding mitigation suggested by Judge of Circuit, on the ground of her being in a state of temporary frenzy. Musst. Burraee's case. 27

3 Prisoner convicted of throwing herself and her two infant children into a well in a fit of anger, by which the younger was killed; sentenced to imprisonment for life. Musst. Rumkoo's case. 55

4 A Burkundaz convicted of murdering his pregnant wife, by sword and spear wounds. Sentenced to be hanged. Chand Khan's case. 102

5 A Sepoy convicted of murdering a Havildar of his corps in prosecution of theft. Sentenced to be hanged. Jowahir's case. 103

6 Case of a woman killing her own infant in a fit of passion by cutting its throat, and afterwards attempting to commit suicide: *futwa Deeut*, sentence death. Musst. Munjoo's case. 146

7 Case of a prisoner who murdered his concubine in a fit of passion, and afterwards took her ornaments: sentenced to imprisonment for life; though the conviction was not for murder in prosecution of robbery. Luchmun Rajpoot's case. 200

8 Three prisoners, convicted of concerting and perpetrating a murder from motives of enmity, sentenced to be hanged; a fourth, for the same offence, to imprisonment with hard labour for life; a fifth, for being privy to the same, to imprisonment for seven years; and a sixth, for being privy after the fact, to three years imprisonment. Case of Sheikh Mogul and others. 293

9 Six prisoners convicted of burning alive a woman from motives of revenge at being ousted by a decree of court. One (her husband) sentenced to imprisonment for life, and the rest to seven years imprisonment. The Judge of Circuit having declined to put the seventh prisoner on his defence on account of his youth, the Court ruled that this proceeding was irregular. Case of Chitram and others. 310

10 The prisoners were charged with the murder of a Burkundaz; but it appearing that the deceased and another Burkundaz had in cold blood put to death a villager, whom they had seized on a criminal charge, after they had slain a person who had come to his rescue, and while they were under no reasonable apprehension, the Court directed that the prisoners should be discharged. Case of Hurdeo and others. 327

11 Prisoner, aged sixteen years, convicted of theft, attended (without the privity and intent of the prisoner) with murder; sentenced, under all the circumstances of the case, to 30 rattans and seven years imprisonment. Shubhamut Khan's case. 331

12 The prisoner (a Sepoy) being convicted of shooting among a crowd, whereby a boy was killed, sentenced, under the circumstances of the case, to five years imprisonment. Khadooram's case. 334

13 Prisoner convicted of perpetrating a malicious murder by means of a heavy bamboo, sentenced to suffer death; though the act did not appear to have been premeditated, and the instrument was lying close by him at the time the murder was perpetrated. Sumoot Singh's case. 342

14 Case of a prisoner, murdering his own daughter from revenge against his son-in-law. Sentence, death. Rubbeecoollah's case. 355

15 Prisoners convicted of secretly getting possession of a girl aged eight years, and deserting her in a manner which caused her death: sentenced to imprisonment for life. Case of Hoolasee and Musst. Munooea. 389

16 The prisoner (a Brahmin) sentenced to be hanged, being convicted of the murder of his infant child by dashing it three times on the ground in a fit of anger, occasioned by a dispute about land. Tulloo Tewaree's case. 446

17 Case of murder tried at Nottingham. *See* notes, pp. 475, 476.

18 The prisoner killed, by repeated blows of a club, a man who was in the act of violating his brother's wife: sentenced to one year's imprisonment, the homicide

not being necessary to the prevention of the act. Chetta's case. 491

See ABORTION, PROCURING, No. 1. ACCESSARY, No. 1. ACCOMPLICE, No. 1. ADULTERY, Nos. 2, 4, 5. AFFRAY, No. 4. BAIGARS, No. 2, 3. CONFESSION, Nos. 5, 10, 12, 13, 14, 15, 17. CONSTRUCTION, No. 1. CIVIL SURGEON, No. 1. EVIDENCE, Nos. 6, 8, 10, 11, 14, 16, 18, 19, 21, 22, 26. FUTWA, Nos. 3, 5. HOMICIDE, CULPABLE, Nos. 2, 3, 4, 5, 6, 7, 8. INSANITY, Nos. 1, 2, 3, 4, 5. JURISDICTION, No. 4. MISSING PERSONS, Nos. 1, 2, 3, 4. MITIGATION OF PUNISHMENT, Nos. 3, 4, 5, 7, 10, 11, 14. MINORITY, No. 1, 4. MOTIVE, Nos. 1, 2. MUTE, No. 1. PARDON, No. 1. POISONING, Nos. 2, 4, 5. PRACTICE, Nos. 2, 9, 11, 19, 22, 24. PROMISE, No. 1. PROSECUTORS, No. 1. REGULATIONS, No. 2. SUTTEE, Nos. 1, 3, 4, 5. TRANSPORTATION, No. 1. TORTURE, No. 1. WITCHCRAFT, Nos. 1, 2, 3.

MUTE.

1 A prisoner standing mute, was convicted of wilful murder; but *Kissas* was declared barred by a slight suspicion of mental derangement, and *Deeat* incurred. The Nizamut Adawlut, considering the prisoner mute from obstinacy, sentenced him to imprisonment for life. Radhakaunt Chung's case. 365

2 In the case of a prisoner standing mute, it is not sufficient, under the Court's circular order, dated August 3d, 1814, that the deposition of the Assistant Surgeon be taken as to his sanity, or otherwise, but he should be examined specifically as to the cause of his standing mute. Case of Khandharee and Ajeeta. 416

OATHS.

See WITNESSES, No. 1.

PARDON.

1 It is not competent to a Magistrate to commit individuals to take their trial for whom he had obtained a conditional pardon from the Nizamut Adawlut, without reference to that Court; and being so committed, the Judge of Circuit is competent to renew the offer of pardon. Case of Urjoon Biswal and others. 289

PERJURY.

1 The prisoner was charged with perjury in giving in a false schedule of his property, for the purpose of being admitted to sue as a pauper. Held that the recital of his having made oath, in the *roobukaree* of commitment, is not sufficient evidence of the fact, and that the recorded evidence of witnesses in a civil court is not sufficient proof in a criminal trial as to the real value of his property. Byjnath Singh's case. 64

2 A false deposition taken by the *Omla* of a Magistrate, not in presence of the Magistrate or of his assistant, held to be not punishable under the Regulations. Bhola Ghazee's case. 154

3 The confession of a prisoner that he swore falsely is sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the deposition charged to be false. Khooman's case. 168

4 A deposition wrongly taken on oath by a Magistrate, not allowed, as such, to affect the prisoner. Acquittal of perjury, under the circumstances. Gungabishen's case. 180

5 False evidence taken before the *Serishtadar* of a civil Court on oath administered by such officer, is punishable as the crime of perjury, supposing it material to the issue. Moohummud Ewuz's case. 202

6 The prisoner personated another, and swore falsely that he was present at an affray. It appearing that his sole motive was to oblige the individual whom he personated, he was sentenced to three *months imprisonment*. Mahommed Alee's case. 204

7 The prisoner having admitted before the Moulovee, that he had perjured himself in the Court of the Register, was sent by the Moulovee to the Magistrate, and therefore committed by the latter officer to stand his trial for perjury. Held that this proceeding was irregular, and that the commitment should have been made at the instance of the Court in which the perjury was committed. Ramjee Rai's case. 208

8 Case of a father (aged 70) swearing falsely to screen his son, who was charged with an offence: sentenced, under all the circumstances, to three months imprisonment without labour. Soomut Rajpoot's case. 313

9 The prisoner being charged with perjury, in falsely swearing that he had no intercourse with a certain Darogha, (suspected of levying contributions,) was released; the false swearing not amounting to perjury, as defined in clause 1, section 4, Regulation II. 1807. Gholam Rai's case. 314

10 On conviction of swearing falsely to the identity of two persons whom the Magistrate had by way of device placed among the defendants, the Court, under the cir-

cumstances of the case, did not deem it advisable to award any punishment. Case of Ajib and Sookraj. 321

11 Held that a debtor's producing a witness, who deposed falsely as to his having witnessed a payment to his creditor, forms sufficient presumptive evidence against the debtor to convict him of subornation of perjury. Case of Jumal Ali and Ramdial. 361

See SUBORNATION OF PERJURY, No. 1, 2.

PLUNDERING.

1 On conviction of plundering a stranded boat, the Court were of opinion, that the offence of the prisoners did not amount to robbery by open violence, and sentenced them to three years imprisonment. Case of Nubboo Singh and others. 315

POISONING.

1 Case of a slave convicted of administering *dukra* to his master, in consequence of which he died: sentenced to suffer death. Boodun Kuhar's case. 19

2 Two prisoners convicted, the one of causing to be administered to her husband poison in the shape of a pill, the other of administering the same. Sentence imprisonment for life. Case of Attaoollah and Musst. Tuppee. 156

3 One prisoner was convicted of having prepared the poison of *dhuttoora* for the purpose of administering it to his rival, with a murderous intent: sentence, 10 years imprisonment. Case of Kootub and Munsaud. 281

4 The prisoner being charged with murder, by poisoning her rival wife, and convicted of that offence by circumstantial evidence, was sentenced by the Nizamut Adawlut to suffer death: no *futwa* taken, the case having occurred within the jurisdiction of the Commissioner of Rungpore. Musst. Kaltee's case. 347

5 The prisoners accused of administering poison in wine to a person with whom they had a dispute. The law officers delivered a *futwa*, declaring that the charge was not proved, and that it was probable that the deceased died by excessive drinking. Prisoners acquitted. Case of Bydianath and others. 368

See CIVIL SURGEON, No. 1. PRACTICE, No. 9.

PRACTICE.

1 Held that it is irregular in a Judge of Circuit to cross-question a prisoner on trial with a view to his conviction, after he has made his defence. Gunga Pursaud's case. 7

2 A trial for murder, charged to have taken place in the Lukhnow territory, quashed by the Nizamut Adawlut, the permission of Government not having been obtained to bring the prisoner to trial. Bahooa's case. 10

3 A warrant of release should always follow an acquittal, even though the prisoner may have been previously convicted on another charge. Case of Kunhia Singh and others. 10

4 It appearing from the evidence of some of the witnesses, in the course of a trial before the court of circuit, that they were concerned in the act with which the prisoner stood charged, the court directed the circuit Judge to consider the proceedings of the trial held by him, and on which his reference to the court was founded, as incomplete: and ordered a further investigation of the case at the ensuing sessions, the charge being drawn up as well against these witnesses, as against the prisoners first indicted, to whom leave was to be given to make a supplementary defence: and if no evidence could be found against these fresh prisoners, except that furnished by their own depositions upon oath, some of the least guilty among them were to be offered a free pardon, on the condition of their disclosing all the circumstances of the case which might have come within their knowledge. Case of Sufder Khan and others. 14

5 A prisoner found guilty by the *futwa* of the law officers of privity to a Dacoity on his own confession in the Mofussil and before the Magistrate; but released by the Nizamut Adawlut, the persons whom he named as his accomplices having been acquitted of the charge of Dacoity. Case of Narain and others. 21

6 It is irregular not to hear witnesses named for the defence, on the ground that they have been already heard for the prosecution. Case of Chand Holdar and others. 37

7 In a case of four prisoners charged with Dacoity, the second Judge voting for the acquittal of three, and the conviction of one; the fourth Judge, for the conviction of all; and the officiating Judge differing from both his colleagues, voting for the acquittal of three, and the conviction of one as receiver only. Sentence issued under the signature of the three Judges on the several prisoners, conformably to the majority of opinions. Case of Attaboodeen and Kishnanund. 40

8 The *futwa* of the law officers of the Nizamut Adawlut convicting the prisoners of a minor offence, distinct from that with which they were charged, the Court directed their release; they being still liable to be tried on the minor charge. Case of Ramnewauz and others. 50

9 Prisoner being charged in two cases, the first with murder by poison, and the second with poisoning unattended by fatal circumstances, the Judge of Circuit, considering him guilty of the first offence, thought it unnecessary, under Regulation XV. 1814, to proceed with the trial of the second; but sentence by Nizamut Adawlut postponed in the referred case, until the other should be tried. Kulwa's case. 51

10 See Note, p. 63.

11 It is essential to conviction on a trial for contumacy, that it be proved the proclamation was made by beat of drum at every Thana within the Magistrate's jurisdiction; and in a trial for this offence, a *futwa* from the law officer is not requisite. Proclaimed persons having been tried on the charge of dacoity and murder, for which they were proclaimed, and not on the charge of contumacy, and the Court having ruled that they should have been tried on the latter charge first, it was determined on their being acquitted of the charge of contumacy, that they should be tried *de novo* on the charge of dacoity and murder. Akaloo and Goordial. 87

12 Two judges of the Nizamut Adawlut, fully concurring in all points of a trial, are competent to pass a final sentence at variance with the opinions pronounced by two other judges who differed from each other. Case of Mukarim and others. 121

13 See Note, pp. 124, 125.

14 Where a prisoner is charged with two or more distinct offences, the record of each trial should be kept separate, and a *futwa* should be taken on each individual case; not on the whole collectively. Choona's case. 140

15 It is irregular in a Judge of Circuit to enter into any examination of a prisoner as to his confession, beyond his simple avowal or denial of the same. Case of Sham Haree and others. 185

16 The prisoner having admitted before the Moulovee, that he had perjured himself in the Court of the Register, was sent by the Moulovee to the Magistrate, and therefore committed by the latter officer to stand his trial for perjury. Held that this proceeding was irregular, and that the commitment should have been made at the instance of the Court in which the perjury was committed. Ramjee Rai's case. 208

17 See Note, pp. 253, 254.

18 Held that a capital sentence may be passed under Regulation IV. of 1822, in spite of a *futwa* of *Deeut*. In this case the law officers gave a second *futwa*, declaring the prisoner liable to death by *Seasut* on conviction of *Shibh-i-wmd*; and the prisoner was hanged under the peculiar circumstances of the case, though the corpse of the deceased was not found. Babooa Nutt's case. 257

19 In a case of conviction by the law officer of robbery with attempt to murder, the trial must necessarily be referred to the Nizamut Adawlut, whether the presiding Judge concur in or dissent from the *futwa*. Umerodh Pande's case. 264

20 A prisoner having been acquitted by a Judge of Circuit, on very unsatisfactory grounds, of the charge of rape, the Court, on revision, did not touch the acquittal, but recorded their disapprobation of the sentence. Sheikh Meerun's case. 292

21 There being only four Judges present in the Nizamut Adawlut, and differing in opinion as to a criminal sentence, held that there was no legal objection to the exercise of his casting voice on the part of the officiating chief Judge, by a modification of his opinion in favour of the prisoners. Assud Ali and Sheikh Moohummud. 384

22 After taking a *futwa* from his law officer acquitting the prisoners, the Judge of Circuit concurring therein as the evidence stood, recommended that an additional witness should be examined against them; but he was apprised that this is illegal, and ordered to release the prisoners forthwith. Case of Nujuf Ali and Fyz Ali. 404

23 A petition having been presented to the Court of Nizamut Adawlut for the release of a prisoner formerly sentenced by that Court, the majority of the Judges held that they had no power to interfere with the sentence, on the ground of their entertaining a difference of opinion as to the merits of the case, or as to the quantum of punishment awarded. Kumul Musshalchee's case. 477

24 The evidence of witnesses for the prosecution having been taken after the prisoner's defence, without his having been called on for a further defence, as regarded such testimony, the Court of Nizamut Adawlut held that the proceedings were informal, and they were returned

that the omission might be supplied. Suroop's case. 481

25 In a case of two prisoners, there being three Judges for the conviction of the first, and two for the acquittal and two for the conviction of the second; the fifth Judge took up the proceedings with reference to the latter prisoner only, and being of opinion that he should be acquitted, an order for his release issued; and, in deference to the majority, was signed by two Judges, one of whom had originally given his voice for conviction. Case of Oottum and Purmanund. 483

26 In a trial for murder, in which there were two prisoners, four Judges of the Nizamut Adawlut having given their opinions, and there being a difference as to one of the prisoners, the fifth Judge took up the case, and pronounced his opinion with reference to that prisoner only; subscribing, however, the sentence on all three prisoners, drawn out according to the opinion of the two Judges with whom he partially concurred. Case of Shunker Das and Ghureeb Das. 485

See ADULTERY, No. 7. APPEALS, No. 1. BURGLARY, No. 2. CONFESSION, No. 6, 8, 14. COMMITMENT, No. 3. CONSTRUCTION, No. 1. EVIDENCE, No. 2, 23. EUROPEANS, No. 1. FINES, No. 1. FUTWA, No. 3, 7. INSANITY, No. 4. MOOHUMMUDAN LAW, No. 2. MURDER, No. 9. PARDON, No. 1. PERJURY, No. 2, 4. PROCESS, RESISTANCE OF, No. 1. PROSECUTORS, No. 1. RAPE, No. 2, 3. REGULATIONS, No. 2. SODOMY, No. 1, 2. TRANSPORTATION, No. 2.

PROCESS, (RESISTANCE OF)

1 Process issued by a Thanadar at the requisition of an Ameen, who reported to him that the former Zemindars were ripe for rebellion, held to be illegal; and a charge of resistance of process is not a fit subject of commitment to the Court of Circuit. Case of Purtab Singh and others. 225

PROMISES.

1 Case of murder of a child for the sake of its ornaments. Proof that the prosecutor promised not to prosecute, if prisoner would restore the ornaments, held not to be sufficient to bar a capital sentence. Kuntheeram's case. 96

2 Prisoner found guilty of privity to Dacoity, on his own confession, by the *futwas*, but released by the Nizamut Adawlut, it appearing that he had been induced to confess by a promise of pardon from the *mohurrir* of the Thana, and of being appointed a *burkundaz*. Case of Netra and others. 166

PROSECUTORS.

1 On a charge of murder and wounding, the law officers acquit of the wounding on the ground of there being no prosecutor, and the Court observed, that it would have been more regular, had the Vakeel of Government, in the absence of the wounded individuals, been constituted prosecutor. In the present instance, however, it was immaterial, the prisoner having been sentenced capitally on the charge of murder. Ramdial's case. 241

PROVOCATION.

See HOMICIDE, CULPABLE, No. 1.

PUNDITS.

1 The pundits of the Nizamut Adawlut, having formerly declared that a woman of the brahminical tribe was not competent to perform the rite of *Anoomurun*, state that this doctrine is not applicable to the case of a woman who is impressed with the belief of her husband's death, but of which event no certain intelligence has been received. This distinction was overruled by the Court. Case of Ramdut and Balgobind. 274

RAPE.

1 It is not necessary, under Regulation XVII. of 1817, to refer to the Nizamut Adawlut a trial for rape, unless the Circuit Judge and his law officer be of opinion that the offence was actually consummated. Meeran Shah's case. 182

2 Held that the provision contained in clause 1, section 6, Regulation XVII. 1817, (which requires the law officer to declare only whether the prisoner is legally convicted,) is not applicable to a case of rape attended by robbery. Poorye Lode's case. 267

3 On a charge of rape, the prisoner was acquitted; but found guilty of the minor offence of adultery, and sentenced for that offence to one year's imprisonment. Bungsee Baooree's case. 317

See EVIDENCE, No. 24. MITIGATION, No. 14. PRACTICE, No. 20.

RECEIVING STOLEN PROPERTY.

1 The prisoner convicted of receiving property, knowing it had been obtained by theft, attended with murder, and sentenced to 14 years imprisonment; to con-

vict of this offence it not being deemed necessary to prove that the person robbed had possession of the property, up to the day of his death. Sheoghoolam's case. 425

REGULATIONS.

1 See Note, p. 48.

2 The Court did not think fit to apply the provisions of a Regulation to an offence committed subsequently to the date of its being in force, but previously to the probable date of its receipt at the place where the offence was committed. Bunwaree's case. 233

See CONSTRUCTION, No. 1.

RESCUE.

1 Two sepoys convicted by the *futwa* of rescue, acquitted by the Nizamut Adawlut, on the ground of their having acted in obedience to the orders of a Havildar, their immediate superior. The Havildar was also acquitted, he having received instructions from a person whom he deemed himself bound to obey. Case of Pursun Singh and others. 330

ROBBERY.

1 To constitute the crime of robbery by open violence, as defined in the Regulations, it is requisite that persons should go forth, if unarmed, in a gang. Balgobind's case. 23

2 Highway robbery, attended with assault by a single unarmed offender, does not come within the provisions of robbery by open violence, as defined in clause 1, section 3, Regulation LIII. 1803. Purmsookh's case. 53

3 Prisoner convicted of robbery and wounding, with the handle of an adze. It being inferred, from the circumstances and place of the occurrence, that his intent was to kill, sentenced to 39 *corahs* with imprisonment in transportation for life, under clause 4, section 8, Regulation XVII. 1817. Bhagye's case. 77

4 Of two prisoners, one snatched a necklace from an old woman in the daytime on the high road, who fell from the pull, but sustained no injury; while the other prisoner stood by. Held that this does not amount to the crime of robbery by open violence, as defined in the Regulations. Case of Khoonwa and Timlah. 153

5 Case of a gang of twenty men armed with clubs, who secretly effected an entry into a house, and afterwards maltreated the inmates; held that this is sufficient to constitute the crime of robbery by open violence, as defined in clause 1, section 3, Regulation LIII. 1803. Case of Oopasoo and others. 217

6 Prisoner sentenced to 21 years imprisonment for the offence of robbing his fellow mendicant (an old woman) in the jungle, and, after beating her with intent to murder, leaving her there for dead. Gobind Das's case. 219

See JURISDICTION, No. 4. MOOHUMMUDAN LAW, No. 5.

ROBBERY (HIGHWAY.)

See MITIGATION, No. 1.

ROBBERY, WITH ATTEMPT TO MURDER.

1 Prisoner convicted of throwing a boy into a well with intent to murder, and taking his ornaments; sentenced to imprisonment for life. Kinnur's case. 479

SEDITION.

1 The prisoner being charged with rebellion and high treason against the state, was convicted of seditious practices, and disturbing the peace; and sentenced for those offences, under all the circumstances of the case, to imprisonment with labour for the term of five years. Teepoo Paugul's case. 429

SENTENCES.

See PRACTICE, No. 25, 26.

SEPOYS.

See AFFRAY, No. 4. BAIGARS, No. 3. MURDER, No. 12. RESCUE, No. 1.

SODOMY.

1 Two individuals convicted of sodomy, sentenced to 30 stripes, *Tushheer*, and eight years imprisonment: an instigator of the offence sentenced to the same punishment; and the Court determined, that as *Tushheer* generally forms part of the punishment on conviction of this offence, the case should always be referred to the Nizamut Adawlut. Case of Pimmee and others. 49

2 When the Judge of Circuit does not deem it necessary that public exposure should form any part of the punishment of a prisoner convicted of sodomy, he need not refer the case to the Nizamut Adawlut, if he agree with his law officer. Sookhooa's case. 238

SUBORNATION OF PERJURY.

1 Held that a debtor's producing a witness who deposed falsely as to his having wit-

nessed a payment to his creditor, forms sufficient presumptive evidence against the debtor to convict him of subornation of perjury. Case of Jumal Ali and Ramdial. 361

2 The prisoner having produced a person in a court of justice to give evidence under a fictitious name, was convicted of subornation of perjury, though the perjury was not completed. Sentence, imprisonment with hard labour for two years. Ramsoondur Bhagul's case. 363

SUICIDE.

2 Three Moosulmauns convicted of aiding in the suicide of a leprous woman, who buried herself with the corpse of her husband, (also a leper,) sentenced to six months imprisonment. Case of Fukeera and others. 18

See MITIGATION, No. 5.

SUTTEE.

1 Case of four Hindoos and two Moosulmauns, convicted of forcing a woman to complete the sacrifice of *suttee* against her will, by repeatedly throwing her on the pile, from which, after she had voluntarily ascended it, she was desirous of escaping. Two of the Hindoos (her relations) sentenced to one year's imprisonment; two others (not her relations) to two years; and, of the two Moosulmauns, one (who struck her with a sword) sentenced to five years imprisonment, and the other to three years. Case of Bhuraichee and others. 91

2 The omission to give notice to the police of an intended *suttee*, is not a criminal offence punishable under the Regulations. Case of Mungul Rai and others. 179

3 Case of a woman who burnt herself with the corpse of her brother. Her father, who chiefly assisted at the sacrifice, sentenced to 7 years imprisonment. Degumber Pande's case. 246

4 The pundits of the Nizamut Adawlut, having formerly declared that a woman of the brahminical tribe was not competent to perform the rite of *Anoomurrun*, state that this doctrine is not applicable to the case of a woman who is impressed with the belief of her husband's death, but of which event no certain intelligence has been received. This distinction was overruled by the Court. Case of Ramdut and Balgobind. 274

5 The burning of a Brahminee woman on a funeral pile different from that of her husband, having been declared illegal; her father-in-law, who assisted at the *suttee*, sentenced, under all the circumstances of the case, to one year's imprisonment. Surnam Tewarry's case. 279

6 The prisoner convicted of assisting at an illegal *suttee*. Sentenced, under the circumstances of the case, to three years imprisonment. Sheo Suhai's case. 283

7 Prisoner convicted of assisting at the *suttee* of his brother's wife, she being under the prescribed age, and having sacrificed herself, not when she heard of her husband's death, but one year and a half afterwards. Sentence, three years imprisonment. Gunga Doobe's case. 286

8 On conviction of assisting at an illegal *suttee*, unaccompanied by any aggravating circumstances, the prisoners were sentenced to six months imprisonment without labour and irons. Case of Juddoonath and others. 320

9 Conviction of assisting at an illegal *suttee*, the widow having left a child under three years of age, and no one having executed the prescribed deed engaging to maintain it. Punishment reduced to one month's imprisonment, in consequence of long confinement before trial. Ajoodhia Misser's case. 391

10 Conviction of assisting in an illegal *suttee*, the female being the wife of a Brahmin, and aged but nine years, having burnt on a pile with his turban and *juneo*: 1st prisoner sentenced to imprisonment for one year without labour and irons; 2d to imprisonment for one month. Case of Ram Pursun and Bul Misser. 392

THEFT.

1 The prisoner being charged with burglary and theft, the Court, with reference to all the circumstances of the case, convicted him of assault and outrage, and sentenced him to seven years imprisonment. Suleem's case. 333

See FUTWAS, No 6. MISSING PERSONS, No. 1.

THUGGEE.

See JURISDICTION, No. 4.

TORTURE.

1 Case of gross maltreatment and torture, (apparently to extort confession of theft,) which ended in the death of the person abused: principal sentenced to 14 years imprisonment: three accomplices to 10 years imprisonment each: two accomplices in an inferior degree, one to seven, and the other to two years imprisonment: and two others acquitted. Case of Byjnath and others. 378

TRANSPORTATION.

1 On a conviction of murder, the Circuit Judge recommended that transportation should form part of the sentence, but this recommendation rejected by the Nizamut Adawlut, and sentence passed of imprisonment for life in the Alipore jail. Ghooree Brahmin's case. 152

2 It being proposed to sentence a prisoner, convicted of murdering a child for the sake of its ornaments, (the corpse not being found,) to perpetual imprisonment in transportation, with stripes, it was ruled by a majority of the Court, that he should be sentenced to imprisonment for life without transportation, but with stripes. Case of Khialee Baz and Musst. Makhee. 489

TREASURER.

1 The Treasurer of a Collector's office sentenced to punishment for paying money out of the treasury under illegal and irregular orders of the Collector, which he well knew were illegal and irregular, he being *de facto* Treasurer, though not confirmed, and though the Collector himself had not been brought to trial. Lokmun's case. 229

See EMBEZZLEMENT, No. 2.

TRESPASS.

See CULPABLE HOMICIDE, No. 9.

TUHSEELDARS.

See EMBEZZLEMENT, No. 3.

TUSHHEER.

1 Two individuals convicted of sodomy, sentenced to 30 stripes, *Tushheer*, and eight years imprisonment: an instigator of the offence sentenced to the same punishment; and the Court determined, that as *Tushheer* generally forms part of the punishment on conviction of this offence, the case should always be referred to the Nizamut Adawlut. Case of Pimmee and others. 49

UTTERING FORGED DOCUMENTS.

1 The Regulations prescribe no *minimum* of punishment for the offence of uttering forgeries, and a reference for mitigation was made under the misapprehension that there was such *minimum*. But the Court of Nizamut Adawlut, nevertheless, not deeming the person convicted a fit object for mitigation, confirmed the sentence. Case of Amaun Ali and Lal Moodummud. 244

See PRACTICE, No. 25.

VYUVUSTHAS.

See Note, p. 247, 248.

WIFE.

See CONCEALMENT OF MURDER, No. 1. EVIDENCE, No. 9.

WITCHCRAFT.

1 The prisoners convicted of murdering a woman, on suspicion of her being a witch; sentenced, the first two to perpetual imprisonment, and the other three to 14 years imprisonment: another prisoner convicted of having tried the woman, and pronounced her to be a witch, sentenced to seven years imprisonment. Case of Runjoon and others. 56

2 It being proved that a woman met her death in consequence of ill usage and confinement by the prisoner or under his orders, on the imputation of being a witch, the prisoner was sentenced, under all the circumstances of the case, to seven years imprisonment with labour. Jugjeet Singh's case. 183

3 Prisoner convicted of murder, in revenge of the supposed exercise of witchcraft by the deceased; imprisoned for life. Capital sentence remitted, in consideration of all the circumstances of the case, and the uncivilized part of the country (Kumaoon) in which the crime was committed. Keshwa Dome's case. 190

WITNESSES.

1 The minority of a witness is not sufficient to preclude him from being sworn, provided he have a competent sense of the nature of an oath. Hatim Ali's case. 85

See PRACTICE, No. 6.

WOUNDING.

1 Prisoner convicted of wounding his wife with intent to murder. Sentenced to 14 years imprisonment, though little injury resulted to the woman from the wounds. Mungur's case. 207

2 Prisoner convicted of dangerously wounding his wife with a *kutar*, by his own account from motives of jealousy; sentenced to 14 years imprisonment with hard labour in banishment. Sheikh Mochee's case. 211

See ACQUITTAL, No. 2. ADULTERY, No. 7. AFFRAY, No. 2. CORPORAL PUNISHMENT, No. 1. EVIDENCE, No. 17. MOOHUMMUDAN LAW, No. 5. PROSECUTORS, No. 1. WITCHCRAFT, No. 1.

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